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CURRENT TOPICS

A Full Life

YOUNG solicitors are occasionally advised by the more staid among their elders that the surest road to success in their profession lies in unrelenting application to conveyancing and probate and allied subjects and in the avoidance of entertaining distractions like foreign travel and public work. The many who ignore this advice can be encouraged by the career of SIR SYDNEY LITTLEWOOD. In one respect he is unique. The supply of female solicitors is so limited that it is hardly surprising that Sir Sydney is the first President whose wife is also a solicitor. LADY LITTLEWOOD passed the Final in November, 1935, and her only surviving child was born in February, 1936. We understand that this is claimed as a record. She has been secretary of the West Surrey Law Society since its foundation with the exception of one year when she was its President. She is a justice of the peace and has served on departmental committees concerned with the work of magistrates. She is the President of the National Federation of Business and Professional Women's Clubs of Great Britain and Northern Ireland. Sir Sydney's life has not been humdrum. Shot down in 1916, he crossed the Rocky Mountains on a horse in 1930, a feat the relevance of which to his subsequent career is not clear. He is a member of the Council of the Town Planning Association, a past President of the Justices' Clerks' Society, Chairman of the International Bar Association Legal Aid Committee, a member of the Council of the Selden Society, a member of the Court of the Worshipful Company of Basketmakers, a member of the Livery of the Worshipful Company of Solicitors of the City of London, a member of the South-West Metropolitan Regional Hospital Board and Chairman of its Mental Health Committee. In addition to all this he has been a member of the Council of The Law Society since 1940. He was a member of the Rushcliffe Committee on Legal Aid and became Chairman of the Legal Aid Committee of The Law Society: in recognition of this work he was knighted in the 1951 Birthday Honours. As Sir Sydney is clearly in the best of health we must assume that in a few odd moments he contrives to earn a living as a solicitor.

The Disciplinary Committee

LAST week the High Court held that the Disciplinary Committee was entitled to absolute privilege and that no action for defamation could be brought against its members (*Addis v. Crocker and Others* (1959), *The Times*, 14th July). In giving judgment Mr. Justice GORMAN pointed out that the Disciplinary Committee was a body set up under the provisions of the Solicitors Act, 1957, and that it was wrong to refer to it as The Law Society or as a committee of the Society

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such as a finance committee or other sub-committee appointed by it. The plaintiff in the case, a former solicitor, had brought an action against three members of the Disciplinary Committee for an alleged libel contained in its findings and order following an inquiry into allegations of professional misconduct by another solicitor. The preliminary point, taken on behalf of the defendants, that the Committee was not an administrative tribunal, but a tribunal carrying out an authorised inquiry of the nature of a judicial inquiry, and that publication of the findings and order was absolutely privileged, was upheld, the plaintiff's action being dismissed with costs.

Trustee's Meed

GENERAL satisfaction will be felt with the Court of Appeal's unanimous decision that an attesting witness of a will, subsequently appointed a trustee of the estate, is not thereby precluded by s. 15 of the Wills Act, 1837, from entitlement to remuneration for his services as trustee. If he is a professional trustee he may also be paid under a charging clause in the will. In *Re Royce, deceased* (1959), *The Times*, 15th July, the appeal of Mr. G. H. R. TILDESLEY, a solicitor, was allowed against the decision of WYNN PARRY, J., of last November ([1959] 1 Ch. 191). In his judgment the MASTER OF THE ROLLS explained that s. 15 was concerned with the date of attestation. At that date in the instant case no beneficial interest was given to Mr. Tildesley, an attesting witness, who was not a beneficiary under the will when the testator died. The case turned on the fact that the appellant had been appointed as a trustee by the surviving trustee after the testator's death and the proving of the will, and his interest therefore arose from a *novus actus interveniens*. The decision does not alter the fact that it is undesirable for a solicitor to witness a will if he is likely to be concerned with the estate's administration immediately after the testator's death.

Victims of Violence

THE sympathy of the whole country has been stirred by the death of Detective Sergeant RAYMOND PURDY and by the plight of his widow and children. It is understandable that once again there should be a demand for compensating the victims of violent crime and their dependants out of public funds, and we have no doubt that in so far as the provision for the police is inadequate it should be improved. Apart from this, we think that the subject ought to be examined as a whole. Many people are injured and killed besides the victims of violent crimes: probably most of these, or their dependants, are able to recover damages or compensation in some other form, but not all. One suggestion is that the Industrial Injuries Fund should be extended, and the benefits improved, so as to cover the victims of violence. This would involve a completely new approach and it would be necessary to ensure that we were not creating as many anomalies as we were abolishing. Perhaps a better idea would be to popularise accident insurance, but the difficulty about relying on personal initiative would be that there would always be some uninsured victims.

Fingerprints

WHERE the fingerprints of any person have been taken, then, if he is acquitted, the fingerprints and all copies and records of them must be destroyed (s. 40 of the Magistrates' Courts

Act, 1952). This statutory provision answers the question asked by a person acquitted by Mr. PAUL BENNETT, V.C., M.C., the Marlborough Street magistrate, as to whether his fingerprints would be destroyed, but the question prompted Mr. Bennett to suggest that everybody's fingerprints should be taken, from the PRIME MINISTER downwards. He thinks that it would save the police "tens of thousands of pounds a year in time and money" and "an enormous amount of work." Mr. Bennett mentioned the fact that many unidentified bodies are found and that people are often found wandering suffering from loss of memory. If everybody's fingerprints were taken, Mr. Bennett believes that such bodies or persons could be identified within twenty-four hours. Is this suggestion really so outrageous if its adoption would prove to be of such great value and assistance to the police? We must not forget that LORD PARKER, C.J., has recently called for a stronger police force, equipped to deal with the modern criminal. Perhaps a fingerprint of every person in this country should now be accepted as part of that equipment.

A Popular Delusion

IN the course of his judgment in the memorable case of the lady and the unwholesome snails (see "Food for Thought," p. 244, *ante*), His Honour Judge BLADGEN referred to "the popular delusion that is floating about that when anybody suffers a calamity of any sort somebody else has got to pay." The learned county court judge recalled the fact that "the general rule is that the tree lies where it falls." We thought of these observations when we read the newspaper reports of a recent case before STREATFIELD, J., at Bristol Assizes. The plaintiff alleged that after an operation for the removal of the little finger of his right hand he was too tightly bandaged and that, in consequence, he developed gas gangrene and two more fingers had to be amputated. His lordship admitted that the plaintiff had suffered a misfortune of the first magnitude but he was satisfied that no individual had been negligent. In view of this, he gave judgment in favour of the defendants, the board of governors of the hospital in which the operation was performed, and added: "Surgeons, doctors and nurses are not insurers. They are not guarantors of absolute safety. They are not liable in law merely because a thing goes wrong. They are not workers of miracles." It is easy for the layman to forget that the law merely requires that such professional people should exercise professionally that skill, perception and knowledge which belongs to the ordinary practitioner, not that of the topmost specialists in the land.

Dr. G. R. Y. Radcliffe

WE regret to have to record the death at the age of 73 of Dr. G. R. Y. RADCLIFFE who for twelve years was Principal of The Law Society's School of Law and Director of Legal Studies. A very large number of solicitors now in middle age knew him well and will remember his many lectures on the Law of Real Property which were above the heads of at least some of them. Dr. Radcliffe was an excellent lawyer and his text-books on Real Property and the English Legal System have held a permanent place in libraries. His background was legal in that he was the son of Judge F. R. Y. Radcliffe. Probably he will be best remembered as Bursar of New College, Oxford, an office which he held for no less than thirty-two years, from 1924 to 1956.

THE TOWN AND COUNTRY PLANNING ACT, 1959—I

THE Town and Country Planning Bill which received the Royal Assent on 16th July, 1959, and has thus now become the Town and Country Planning Act, 1959, was the subject of an article in three parts published at 102 SOL. J. 817, 834 and 851. The article began by describing the Bill as a most important one of forty-five sections, divided into four parts, together with eight schedules, and concluded by saying that by and large the Bill was one to be welcomed, though one could but regret the prolixity which now seemed inseparable from compensation and town and country planning. The Act has fifty-nine sections, divided into five parts, together with ten schedules, and whereas the original Bill had seventy-seven pages the Act has 124. Comment is perhaps superfluous, but it must be admitted that some of the additions represent improvements of substance rather than matters of drafting.

The Act comes into operation on 16th August, 1959, (s. 59 (2)), but, as explained in the earlier article, the new compensation provisions have in practice been effective from and including 30th October last year (s. 1 (2)).

For the benefit of those who studied the original Bill and the criticisms of it, including those mentioned in the earlier article, the improvements of substance mentioned above may be listed briefly as follows:—

(1) a section (s. 38) has been included to overcome the difficulties disclosed by the decision of the Court of Appeal in *Cater v. Essex County Council* [1959] 2 W.L.R. 739; p. 414, *ante*, the judgments in which were delivered during the passage of the Bill through Parliament;

(2) a section (s. 29) has been included providing that in favour of a person claiming under a local authority any acquisition, appropriation or disposition of land by the authority which needed the consent of some Minister shall not be invalid by reason of such consent not having been obtained;

(3) the appeal to the High Court against decisions of the Minister of Housing and Local Government under s. 17 of the Town and Country Planning Act, 1947, as to what is or is not development has now been made mutual and is available to the local planning authority as well as to the applicant for the decision (s. 32 (1));

(4) a provision has been inserted (s. 35 (2)) to overcome the defect in the purchase notice procedure under the 1947 Act, as amended by the Town and Country Planning Act, 1954, disclosed in *R. v. Minister of Housing and Local Government; ex parte Rank Organisation, Ltd.* [1958] 1 W.L.R. 1093;

(5) where land is being acquired compulsorily in an area defined in a development plan as an area of town development under the Town Development Act, 1952, any increase or diminution in the value of the land acquired due to the town development is to be disregarded in assessing compensation and any betterment due to such development enjoyed by adjoining land of the same owner is to be deducted;

(6) the important provisions relating to planning blight contained in cl. 31 of and Sched. V to the original Bill have been considerably extended; originally they applied only to dwelling-houses and did not include the most prolific source of blight, namely, ordinary road development proposals approved by the local highway authority, but now they take in agricultural units and small business

premises and cover such road proposals (Pt. IV, ss. 39 to 43, and Sched. V).

The object of the remainder of this article is to give a brief account of the provisions of the new Act with special reference to those which are likely to be of interest to readers.

Part I—Compensation

Part I of the Act is headed "Compensation for Compulsory Acquisition of Land." As explained in the earlier article (102 SOL. J. 835), by the repeal of provisions in the Town and Country Planning Acts, 1947 and 1954, the Act (s. 1) restores the general open market value basis for the assessment of compensation laid down in r. (2) in s. 2 of the Acquisition of Land (Assessment of Compensation) Act, 1919, for all acquisitions by public authorities who have compulsory powers of acquisition available. But land is valued in the market nowadays against the background of what is or is likely to be the permitted use of the property under the planning legislation, that is under the local approved development plan and the local planning authority's policy of control under it. A number of sections (ss. 2 to 8) in the new Act govern this background. In addition, the Act (s. 18) introduces an entirely novel principle by giving to a vendor a right to claim additional compensation where, within five years of the acquisition, planning permission is given for some more valuable use of the property than that on the basis of which the acquiring authority acquired it.

All the provisions of the new Act mentioned in the preceding paragraph only apply where the acquiring authority have compulsory powers of acquisition available, i.e., where there is some Act or compulsory purchase order in existence specifically authorising the compulsory acquisition of the property or where the authority are in fact acquiring by agreement but could, if the necessity arose, make a compulsory purchase order under some general power for the purpose in view. Most purchases by public authorities in fact fall in the latter class, but there are also a number of cases where authorities have power to acquire by agreement only, e.g., the general power to buy in advance of requirements under s. 158 of the Local Government Act, 1933, the power to acquire under the Green Belt (London and Home Counties) Act, 1938, and many powers given by local Acts to acquire for the general improvement or benefit of the district. In these cases there are no statutory rules to govern the transaction, no additional compensation is payable under s. 18, nor is there any automatic liability on the authority to pay the vendor's solicitor's conveyancing costs; it is for each party to make the best bargain they can with the other just as between two private individuals, and no further comment is necessary here.

Where the statutory rules do apply it will be normal for the vendor to be advised to employ a valuer to act for him, and this is encouraged by the normal practice of acquiring authorities paying the vendor's valuer's fees on the appropriate scale on completion of the acquisition. Indeed, this is desirable as a professional valuer will nearly always be acting for the authority and, if agreement cannot be reached and the matter has to be disputed before the Lands Tribunal, expert valuation evidence will certainly be necessary. There is, however, a danger that if the acquisition does not proceed, e.g., the authority find some alternative cheaper site, the vendor may be left to pay some fees for abortive negotiations

unless a special agreement is made with the authority at the beginning of the negotiations.

The detailed application of the new rules is perhaps, therefore, a matter of greater interest to the valuer than to the lawyer in general practice, but some brief general outline of them may be of interest here, and the special attention of readers is drawn to what is said about the provisions for subsequent additional compensation.

The background for assessment of compensation

Where the property to be acquired is most valuable in its existing state for its existing use, as in the case of the ordinary dwelling-house on a housing estate, that is the basis on which it should be valued. The complications arise where the land or property has development value and the question what development would be permitted must be answered. As between two individuals the answer would be obtained by looking at the development plan to see what would be permitted and obtaining a suitable planning permission. But it is not so easy where an authority are acquiring the land, because, on the one hand, the plan may very likely limit the use to the purpose for which the authority are buying and for which there may be no general market, e.g., an open space, and consequently no planning permission for any remunerative development for which the market would bid will be forthcoming; and, on the other hand, it would be unfair to the authority if they had to pay a price enhanced by reason of other development which their proposals would bring about.

The Act, therefore, provides (s. 2) that in valuing the property in the market one should have regard to any planning permissions in force at the date as at which the compensation has to be assessed, and that one should also assume that permissions would be granted as follows:—

(1) for the development for which the authority are buying (s. 3 (1));

(2) for the somewhat limited development specified in Sched. III to the 1947 Act, except where compensation has become payable under s. 20 or s. 27 of that Act (s. 3, subss. (3) and (4));

(3) if the land is not included by the development plan in a comprehensive development area or in a residential, business or industrial primary use zone, for any development included in a certificate of appropriate alternative development issued under s. 5 (s. 3 (5));

(4) where the land is defined in the development plan as a site for a specific purpose, e.g., a school, for development for that purpose (s. 4 (1));

(5) where the land is included in a primary use zone (e.g., residential) in the plan (other than use in a comprehensive development area), for development for the primary use or uses or for any secondary use for which permission might be likely to be forthcoming (e.g., a shop on a corner site in a residential zone) (s. 4 (2) and (3));

(6) where the land is included in a comprehensive development area, development for any use allowed in that area for which the site or property as it exists and without regard for any other development or redevelopment proposed for the area is suitable (s. 4 (4)).

In each case the development is to be assumed to be permitted at such times and subject to such conditions as the local planning authority would be likely to decide upon, and the development plan is the plan as in force at the relevant time without regard to any amendments which have not yet been approved by the Minister or which the local planning authority may have in contemplation.

Broadly speaking, the result is that where the plan allows some reasonably remunerative development, i.e., comprehensive development or redevelopment or development for residential, business or industrial uses, that development may be assumed to be permitted, but, where it does not, then one can only assume that there will be permitted the development for which the land is being acquired or whatever development the authority may specify in a certificate of alternative development. But it may be that the authority will say there is no alternative development because, e.g., the land is in a green belt or white area (i.e., an area for which there are no proposals but in which things are expected to remain much as they are), and they are unwilling to permit general building there. Nevertheless, some speculator may be willing to pay a price with some building value in it in the hope that in a few years time the authority may change their mind. In the earlier article the writer pointed out that though the Bill set out what development was to be assumed to be permitted it did not (unlike s. 51 of the 1947 Act) lay down that it must be assumed that no other development was to be permitted at any time (102 Sol. J. 836) thus not excluding the speculative building value. As a result of a debate in the House of Commons Committee, the Act, to set aside any doubt on this point, contains a specific provision to this effect, thus letting in the "hope" value as it has been called (s. 2 (3)). This specific provision does provide, however, that regard is to be had to any opinion the local planning authority may express in a certificate of appropriate alternative development as to the unlikelihood of permission ever being granted, with the intention of cutting out of consideration in assessing the compensation any wildly speculative bid which may be made in the market.

Treatment of unexpended balances

As the reader will be aware the 1954 Act provided in many cases for the attachment to land of unexpended balances of established development value, these balances being available for the payment of compensation for planning restrictions. In assessing the value of a piece of land the market will want to take this into account. One of three things may have happened: first, planning permission may have been refused in the past and the balance may have been paid out in compensation and registered in the appropriate local land charges register; or, secondly, permission may have been refused but no claim for compensation may have been made so that the balance is still outstanding; or, thirdly, planning permission may never have been refused because no application was made, so that the balance is still outstanding. In the first case, if development is to be carried out, the compensation or an appropriate part of it would have to be repaid by the developer to the Treasury (1954 Act, s. 29); therefore the market will deduct this liability in assessing the value. The Act provides, in effect, that a similar deduction should be made in the second case (s. 17), leaving the appropriate claim to be made for compensation for the planning refusal. In the third case, the balance is an asset attached to the land which will be included in the compensation, except so far as the value it represents is already included for some permitted or assumed permitted development.

For example, assume that agricultural land is being acquired for a school in a white area in a development plan. The planning authority are unwilling to certify any alternative development, therefore the land is to be valued on the assumption that only a school will be permitted (for simplicity any question of hope value is disregarded). The agricultural

value of the land is £1,000. Suppose the value of the land with the assumed permission for a school is £5,000. There was an unexpended balance of £3,000 which was paid out under Pt. II of the 1954 Act on a refusal of permission for houses and is registered under s. 29. The compensation will be £5,000, less £3,000. If no permission had been refused and the balance was still outstanding, the compensation would be £5,000. Now assume that the land is being acquired for a recreation ground instead of a school and that its value with permission for a recreation ground is £1,500; the compensation in the first case would be £1,000; in the second case it would be £4,000, i.e., £1,000, plus £3,000.

The last few paragraphs have discussed the basis on which the market will value property. There remain two points to be mentioned before moving on to those provisions in the Act which in fairness to the acquiring authority prevent betterment due to their proposals being taken into account. First, an application for a certificate of alternative development, which must specify the class or class of development the applicant wishes to be certified, may be made to the local planning authority either by the owner or by the acquiring authority but a copy must be served on the other party (ss. 5 and 8); there is an appeal to the Minister by either party against any certificate issued (s. 6). Secondly, any dampening effect on the market value caused by the development plan or other scheme is to be disregarded (s. 9 (6)).

Discounting betterment

The provisions for discounting betterment are to be found in s. 9 and Sched. I. They are somewhat complicated, but, in brief, no enhancement, or for that matter diminution, of the value of the land to be acquired due to any development of other land in the same compulsory purchase order, or, where the land is in a comprehensive development area in the development plan, a new town designated area or an area defined in a development plan for town development under the Town Development Act, 1952, to any other development in that area which would not have been likely to be carried out but for the authority's proposals, is to be taken into account in assessing the compensation (s. 9, subss. (1) and (2)). Further, where the value of any adjoining land of the same owner not being acquired is enhanced by any such development on other land or on the land to be acquired the increase in value is to be deducted in assessing the compensation (s. 9, subss. (3), (4) and (5)).

Subsequent additional compensation

So much for the assessment of the compensation at the time of acquisition. Now as to the novel principle referred to above relating to additional compensation, which is provided for by ss. 18 to 21. There are two points about this which particularly concern the reader. First, the right to additional compensation exists not only where the land is in fact acquired by compulsion but also where it is sold by agreement, providing only that the acquiring authority could, if the necessity arose, acquire by compulsion. There is no need to make any special provision in the contract for sale; the right is given by the Act (s. 18 (1)). Secondly, additional compensation is payable where within five years of the acquisition planning permission is given for some development more valuable than the development on the basis of which the compensation was originally assessed and not being development for the functions of the authority for which the land was acquired, and the Act (s. 19) enables the vendor to register his name and address with the acquiring authority for the purpose of being notified

of any such permission. A claim for the additional compensation must be made within six months of the notification or, if no address has been registered, within six months of the permission (s. 18 (3)). Obviously, therefore, the registration of the vendor's name and address is most important, otherwise the vendor might lose his right to compensation through ignorance of the grant of any permission. It appears to the writer to be the duty of the vendor's solicitor on completion to register his client's name and address accordingly, except where there is clearly no point in doing so, as where a narrow strip of land is sold for a road widening, and except where the land at the time of acquisition was in a comprehensive development area in the development plan, a new town designation area or a town development area defined in the development plan, in which cases there is no right to additional compensation (s. 18 (4)). Moreover, as the right to compensation relates back to acquisitions after 29th October, 1958, the reader should consider registration for these past transactions as well as for future ones.

Where the vendor registers an address and the acquiring authority dispose of the land in the five years, they have to pass the registration on to the local planning authority, and it then becomes the latter's duty to notify any permission (s. 19 (4)).

The additional compensation payable is to be the difference between the compensation already assessed and paid out and that which would have been assessed if the new permission had been in force at the time of the original assessment (s. 18 (2)).

Sections 20 and 21 extend these provisions to cases where planning permission is deemed to be granted and to Crown land respectively.

Miscellaneous compensation provisions

This part of the article, dealing as it does with compensation, would not be complete without a brief reference to s. 10 and Sched. II, which, in the case of acquisitions of unfit houses at site value, amend the existing law by providing for the cost of clearance in effect to be deducted and for the gross value of the house for rating purposes to be the minimum compensation payable to an owner-occupier; to s. 11, which repeals certain special provisions of the War Damage Act, 1943, and the 1947 Act, relating to assessment of compensation on the acquisition of war-damaged land; to s. 13, which gives an acquiring authority a discretion to pay compensation for disturbance to persons such as weekly tenants who are not entitled to it as of right; and to ss. 14, 15 and 16, containing special provisions with regard to outstanding notices to treat served before 6th August, 1947, which are to become invalid unless the authority serve a notice of intention to proceed within six months, and, if they do, the owner may elect to have his compensation assessed under the 1947 and 1954 Acts instead of on pre-war values.

The remaining provisions of the Act will be discussed in a further part of the article.

R. N. D. H.

(To be concluded)

INCREASE IN MOTORING OFFENCES

A return of offences in England and Wales relating to motor vehicles compiled by the Home Office from information supplied by police forces shows that last year there was a large increase in the number of offences and alleged offences. The total for 1958 was 1,004,085, the highest on record. This figure shows an increase of 227,476, or 29.3 per cent. over 1957.

JAM FOR THE VENDOR

OCCASIONALLY the fates who look after these things arrange a case so neatly that it looks like something out of an examination paper. This happened in *Re Hollebone's Agreement* [1959] 2 W.L.R. 536; p. 349, *ante*, a decision of the utmost value to anyone drafting a contract for the sale of a business, although the editor of the *Weekly Law Reports* has decided to "star" the case as one not intended to be included in the Law Reports.

Mr. Hollebone was a wine and spirit merchant in Bloomsbury and in 1952 he sold his business to a company. The purchase price was based on a balance sheet at 31st March, 1952, and reading between the headnotes one can trace a familiar course of events.

The final terms were not settled until some months after 31st March. Once they were agreed it would have been inconvenient to alter the figures, and a contract was prepared which was intended, as between the parties, to date back the take-over to 31st March. The contract was signed on 14th July, 1952, and was actually completed the same day. Mr. Hollebone had continued to carry on the business between 31st March and 14th July, and the question before the Court of Appeal was who should pay his income tax and surtax under the following categories:—

(1) A sum of £960 shown on the balance sheet at 31st March, 1952, and representing the second instalment of income tax for the year of assessment ending on 5th April, 1952.

(2) Income tax in respect of trading profits made between 31st March and 14th July.

(3) Income tax on a sum of £20,000 chargeable in the following way. By s. 143 of the Income Tax Act, 1952, the stock of Mr. Hollebone's business on discontinuance had to be brought into his accounts at the price for which he sold it. Under the contract the price of the stock was £20,000 higher than the figure at which it stood in the March, 1952, balance sheet, and this difference produced an assessable profit of £20,000 for the final accounting period in addition to the profit on trading.

(4) Surtax in respect of the trading profits from 31st March to 14th July.

(5) Surtax in respect of the £20,000 profit on stock.

Conventional weapons

Mr. Hollebone had two weapons, cl. 4 and 8 of the contract, with which to aim at these five targets, and the possible combinations and permutations are as fascinating as a football pool.

Clause 4: The company shall undertake to pay, satisfy, discharge and fulfil all the debts, liabilities, contracts and engagements of the vendor in relation to the said business and indemnify him against all proceedings, claims and demands in respect thereof.

Clause 8: Possession of the premises hereby sold shall be retained by the vendor until the actual date of completion of this agreement and in the meantime he shall carry on the said business in the same manner as heretofore so as to maintain the same as a going concern, but he shall be deemed as from 1st April, last, to have been carrying on and he shall henceforward carry on the said business as agent for the company and he shall account and be indemnified accordingly.

Trading profits

On cl. 4, the purchasers argued that tax was not a debt, liability, contract or engagement of the vendor in relation to

the business, but was a liability attaching to the profits after they had been earned. They relied on certain decisions, of which the most recent is *R. v. Vaccari* [1958] 1 W.L.R. 297, where income tax was held not to be a debt contracted "in the course and for the purposes of . . . trade or business" under s. 157 (1) of the Bankruptcy Act, 1914.

With some reluctance the Court of Appeal decided that the words of cl. 4 were too wide to be limited in this way, and that the vendor was entitled to have his income tax under categories (1) and (2) paid for him by the purchasers. If the clause had referred to liabilities of the business the result would probably have been different, but liabilities "of the vendor in relation to the business" included income tax on the profits.

On the other hand, surtax on the trading profits was outside the scope of cl. 4, on the authority of *Conway v. Wingate* [1952] 1 All E.R. 782, a partnership case in which an indemnity against income tax was held not to extend to surtax. No mention is made in the report of the vendor's surtax on the profits prior to 31st March, 1952; possibly there was none.

It was conceded by the purchaser that under cl. 8 the vendor was entitled to be indemnified against both income tax and surtax in respect of the trading profits from 31st March to 14th July, and the surtax came out of the vendor's top slice.

Profit on stock

If the purchasers were reluctant to pay the tax of the vendor on ordinary trading profits, it can be imagined what they felt about tax on the £20,000, representing profit included in the purchase price. They even suggested that payment of this tax would be an addition to the price of the stock which would itself attract further tax and so on *ad infinitum*. Unfortunately for them, if cl. 4 applied to income tax at all, it must apply to income tax calculated on the statutory basis down to the date of discontinuance, and to distinguish s. 143 from the rest of the statutory provisions would mean reading into cl. 4 restrictions which were not there. Thus, they lost on category (3).

This still left category (5), the vendor's surtax on the £20,000. Could he get away with this too? Mr. Justice Upjohn in the court below had said "yes," but here the Court of Appeal drew the line; cl. 4 did not apply to surtax as we have seen, and although cl. 8 admittedly covered surtax on the trading profits while the vendor was acting as agent, it could not be extended to the £20,000 which accrued to him as principal and not in any way as agent for the purchasers. The same principle would probably apply to a balancing charge arising on a sale of a business including plant and machinery.

In the final result an all correct coupon would read like this:—

	Income tax	Surtax
Profits prior to 31st March	(1) Purchasers liable under cl. 4	
Trading profits 31st March to 14th July	(2) Purchasers liable under cl. 4 & 8	(4) Purchasers liable under cl. 8.
Profit on sale of stock	(3) Purchasers liable under cl. 4	(5) Purchasers not liable.

The moral

In the course of his judgment Jenkins, L.J., remarked of the contract: "Whoever was responsible for the preparation of that unfortunate document appears to have performed his task by the wholesale adoption of a well-known common form without due regard to the circumstances of the particular

case. The result has been to involve the parties in an interminable dispute, which nearly seven years after the signing of the agreement is still unresolved."

Few of us can read this decision without a sigh of relief. But at least we will give a little thought to the vendor's tax position next time we peruse a contract for sale of a business.

J. P. L.

TRUSTEES PROFITING FROM THEIR TRUSTS

It is a general rule, long since established and widely understood, that a trustee must not derive any advantage from his administration of the trust property (unless, of course, as is not infrequently the case with private trusts, he is himself a beneficiary). This rule is a strict one, formulated so as to keep trustees in the straight line of their duty, and there is much authority for it. Thus in *New v. Jones* (1833), 1 Mac. & G. 668n, Lord Lyndhurst, C.B., pointed out that if a trustee were allowed to perform the duties of his office and to claim compensation for his services, his interest would be opposed to his duty; as a matter of prudence the court does not allow him to place himself in that situation. And in *Bray v. Ford* [1896] A.C. 44, 51, 52, Lord Herschell said: "It is an inflexible rule of a Court of Equity that a person in a fiduciary position . . . is not, unless otherwise expressly provided, entitled to make a profit; he is not allowed to put himself in a position where his interest and duty conflict. It does not appear to me that this rule is, as has been said, founded upon principles of morality. I regard it rather as based on the consideration that, human nature being what it is, there is danger, in such circumstances, of the person holding a fiduciary position being swayed by interest rather than by duty, and thus prejudicing those whom he was bound to protect. It has, therefore, been deemed expedient to lay down this positive rule."

If the trustee does make an unauthorised profit, a constructive trust arises, and he holds that profit on trust for the *cestui que trust*. The classic case is *Keech v. Sandford* (1726), Cas. temp. King, 61, where a trustee, being unable to obtain a renewal for the benefit of an infant beneficiary of a lease of Romford Market, obtained it for himself, and the court held that he was a trustee of the lease for the benefit of the *cestui que trust*, although the lessor had expressly refused to renew it for his benefit.

Remuneration of a trustee may be authorised

Sometimes remuneration of a trustee is authorised, in which case the trustee may take the remuneration allowed: though clearly he may take no more. Commonly the instrument which creates the trust rewards the trustee for the expenditure of his time and trouble, as where a solicitor is given his profit costs. Here difficulties may arise, should the estate prove insolvent, over the nature of the remuneration, but it is not proposed to deal here with that aspect of the matter: the important point is that, *prima facie*, a right to remuneration exists. Not infrequently to-day remuneration can be claimed as a matter of contract: this occurs where a person enters into an agreement with a trust corporation (such as a bank) to act for reward as his trustee. Rarely, remuneration is authorised by the court under its inherent jurisdiction, as happened in *Foster v. Ridley* (1864), 4 De G. J. & Sm. 452: but as Upjohn, J., emphasised in *Re Worthington; ex parte Leighton v. MacLeod* [1954] 1 All E.R. 677,

this is a jurisdiction which will be exercised sparingly and only in exceptional cases.

In the case of a private trust it is unlikely that the prohibition against the trustee profiting will give rise to difficulty. His fate is generally to go unrewarded. If he receives a reward it is such as to be calculable in accordance with definite rules. He is entitled, of course, to be recouped his out-of-pocket expenses, and these, too, are generally susceptible of accurate calculation. He is more likely to lose over his trusteeship than not. If in working out his expenses he has to estimate any figures—as when he uses his car in the course of his duties—any profit which, by accident, he makes is likely to be such as to fall within the *de minimis* principle.

Charitable trust

The charitable trust, on the other hand, presents a potentially more difficult problem. Basically, the case of a charitable trust is no different from that of a private trust. The prohibition against making an unauthorised profit is the same in each case, though in practice the charitable trustee is likely to be under closer supervision than the private one and, on the other hand, it is open to the Charity Commissioners (or, as the case may be, the Minister of Education) in a proper case to authorise remuneration for time and trouble, though it is clear that this jurisdiction would be exercised only in the most exceptional cases. Indeed, in those cases where a charity is regulated by scheme it is customary to draw attention to the trustees' duty by including therein a clause to the effect that no trustee shall take or hold any interest in property belonging to the charity otherwise than as a trustee for the purposes of the charity, and that no trustee shall receive any remuneration, or be interested in the supply of work or goods, at the cost of the charity.

Where the trustees are merely administering a fund and making payments thereout to the beneficiaries, no complications are likely to arise, particularly if, as in a vast number of cases, both the endowment and the work of administration are small. The situation is more difficult where the charity is a large one, involving much administration, or comprises land held for its charitable purposes; or where the trustees have occasion to purchase goods on a fairly large scale, whether because trading as a means of raising funds for the purposes of the charity is numbered amongst its activities or because those purposes themselves involve the consumption of goods, as when the charity takes the form of an institution in which the beneficiaries are cared for.

Committee members in fiduciary position of trustees

In the case of many charities, particularly the larger ones, it is frequently quite impossible for the trustees to carry out the work of administration without assistance: an institution for the care of the poor or aged is an obvious example. In such

cases the trustees must clearly be allowed to expend funds in their hands in paying clerks and servants, and, where appropriate, in paying such clerks and servants pensions and gratuities (since the hope of such is calculated to encourage the better performance of services, and hence the charity is benefited). If the trustees feel any doubt as to whether their trusts empower them to expend money in this way, they can always seek the advice of the Charity Commissioners or the Minister of Education and obtain if need be the protection of an order authorising any particular expenditure. But only those persons may receive payment whose functions are purely ministerial; if they are in any degree managerial, the persons exercising them have the character of trustees, even though they are not appointed as such, and hence they are accountable to the charity for any of its funds which come into their hands. In this connection it should be remembered that where, as not infrequently happens, the assets (be they land or otherwise) are vested in trustees, but the day-to-day management of the charity is in the hands of a larger body called (for example) a committee, in law each member of the committee is also in the fiduciary position of a trustee—a point which some governing bodies seem to overlook. *Re The French Protestant Hospital* [1951] Ch. 567, which is referred to further below is an authority for this.

Where a charity is authorised to pay a clerk or secretary, there will probably be no conflict of interest, because his duties will be ministerial only (provided, of course, that the trustees do not appoint one of themselves). But up and down the country there are many charities, some national but mostly local in character, administered by persons who are appointed for the very reason that their occupations or connections are such that they are likely to be able to secure advantages for the charity in the trusts of which they act. Perhaps the most common cases are those of the lawyer and the accountant who are appointed because it is thought that their professional qualifications will be of use to the trust. By no means infrequently, however, trustees with other qualifications are appointed. How natural, for example, that almshouse trustees should include a local builder who is prepared to look after the fabric of the trust property—so often old and in need of constant care—and whose ready advice may be of great service both to his co-trustees in the exercise of their duties and to the charity itself.

Trustees as their own advisers

That the trustees should be able to be their own advisers in matters requiring professional knowledge and skill is advantageous to the trust and something to be encouraged. The exercise of such knowledge and skill must, however, go unrewarded, though out-of-pocket expenses may be recouped. This is where the difficulty arises, particularly in such a case as that of the builder instanced above. If the almshouses need repair, he may supply the materials required and the labour to carry out the work, but he must charge the charity no more than the bare cost thereof to himself and if he should do the work with his own hands he cannot, of course, charge for his own labour. If he entrusts the work to one of his employees, he may only debit the trust with the bare cost to himself of employing the man for the number of hours which the work takes to complete, because any charge for labour over and above that would amount to a profit to himself out of the trust funds.

Position when goods supplied to a charity by one of its trustees

If the charity relies upon trading for part of its income there may well be much to be said for numbering amongst the trustees persons who are in a position to supply it with the goods which it wants. Such goods must, however, be supplied at the bare cost price, otherwise the supplier will be putting money into his own pocket and be in breach of trust. With the best will in the world it may be hard to calculate the cost exactly, but the supplier-trustee who charges too much does so at his peril. The only safe course for the person who is prepared to supply goods or services to a charity on preferential terms, but is unable to say that he is doing so at no advantage whatsoever to himself, is to ask first to be allowed to relinquish his position of trust, so that no conflict of interest can occur. Unfortunately, a person who is in a position to benefit a charity in such a way is very likely to take the view that, because of his benevolence, he should have some say in its management, and may not be so benevolent if he is denied it.

Where the goods or services are supplied to the charity, not by one of the trustees, but by a company of which a trustee is a director or shareholder, the position of the trustee is not entirely clear. But if he was at arm's length when the contract between the charity and the company was negotiated, then it is conceived that, although he may derive, through his association with the company, some profit from the transaction, he cannot be impeached, because it cannot be said that the transaction was effected through his volition. The corollary of this is that a director should never vote on a contract made with a charity of which he is a trustee.

Relevant case law

Re The French Protestant Hospital, supra, shows that the directors of a charitable corporation are no more entitled to remuneration than are the trustees of an unincorporated body. The charter of the hospital empowered the governor, deputy governor and directors to make byelaws, provided that they were reasonable and not repugnant to law. One of the existing byelaws provided that no person should be eligible to be chosen or to continue as a director who received any emolument from the corporation. Danckwerts, J., holding that it was not proper for the directors to amend the byelaw in question so as to enable two of their number, a solicitor and a surveyor, to receive fees for their advice to the corporation, rejected an argument that because it was the corporation which was the trustee of the property of the charity, and the governor and directors were not trustees, the rules which affected trustees did not affect them. His lordship took the view that since the corporation was completely controlled by the governor, deputy governor and directors, so that it was they who in fact decided what should be done, they were as much in a fiduciary position as trustees in regard to any acts which were done in regard to the corporation and its property. Hence it would be entirely illegal if they were simply to put the property, or the proceeds of the property, of the corporation in their pockets and make use of it for their own individual purposes or for their purposes as a whole, and not for the purposes of the charitable trust for which the property was held. It must follow from this decision that a director of a charitable corporation is not entitled to benefit himself or another company in which he is interested at the expense of the charity by voting as such a director on a contract entered into by the charitable corporation for the supply to itself of goods or services, and that a

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director who did so would hold as a constructive trustee for the charity any benefit which resulted to him from such a transaction. Indeed, in *Re Gee; Wood and Others v. Staples and Others* [1948] Ch. 284, Harman, J. (as he then was), in considering the position of a trustee-shareholder, referred to *Bray v. Ford* and pointed out that the beneficiaries are entitled to the advantage of the unfettered use by the trustee of his judgment as to the government of the company in which they are interested, which they do not get if his judgment is clouded by the prospect of the pecuniary advantage which he might acquire by the use which he made of the trust shares for his own advantage. That principle is clearly applicable to the case where the trustee-director of a charitable corporation votes on a contract in which he is interested.

Conclusion

There can be little doubt that there exist many charities where trustees are deriving profit improperly from their trusts through the supply of goods or services, and an inquiry made recently into the affairs of one charity where this state of affairs was believed to exist has had the effect of drawing

attention to this fact. Equally certain it is that in the great majority of cases the profit will be very small, and often the charity would be greatly at loss in losing the services of the trustee in question. On the other hand, it is right that there should be a strict rule and that the law should be acute to debar trustees from profit. In the result there is likely not infrequently to be an impasse in which the charity for the benefit of which the rule exists yet suffers thereby. Possibly the answer would be to give by statute to the authority having jurisdiction—the Charity Commissioners or the Minister of Education—power to sanction transactions of the kind in question where the authority was satisfied that every reasonable effort had been made to avoid a profit in the hands of the trustee, so that any profit which was made was purely accidental. It is not suggested that this is an ideal solution, and it might turn out to be administratively impossible, but it would certainly be unfortunate if too rigid an application of the rule were to deter benevolently minded people from taking part in the administration of charities to which their knowledge, skill or experience would be of value.

S. G. M.

Practical Conveyancing

CONVEYANCING IMPLICATIONS OF IMPROVEMENT GRANTS

THE provisions of the House Purchase and Housing Act, 1959 (which came into operation on 14th June), as to the making of improvement grants were discussed under the heading "The New Housing Acts," at p. 459 *et seq.*, *ante*. It is not necessary to repeat that explanation, but it is, perhaps, useful to draw attention to the importance which these grants may have to purchasers of small houses, and to the consequences of the making of a grant.

The Ministry of Housing and Local Government have issued a useful circular (37/1959) containing notes on the Act and suggested forms. Free leaflets entitled "Improve your house with a grant" are held by local authorities and a client who is interested might be advised to obtain one. The Ministry have also announced their intention of placing on sale at a price of 1s. 6d., an illustrated booklet, to be known as "New Grants for Better Homes." Recent experience suggests that this will be a really helpful practical guide.

This activity implies that the Government are in earnest in their intention to promote the improvement of old houses which have limited amenities. The circular states that the 1959 Act "marks a further stage in the development of the Government's policy of encouraging home ownership and raising housing standards." Although appreciable numbers of grants have been made already, the new standard grants are undoubtedly designed in a simple manner so that people will more readily apply for them. Similarly a number of the objections which caused owners to hesitate about applying for one of the existing improvement grants have been removed. It is reasonable to expect, therefore, that in the next few years solicitors engaged in conveyancing work affecting small houses of appreciable age will be increasingly concerned to advise as to the possibilities of obtaining a grant and as to the consequences.

Grants

Standard grants are made only for the specified amenities, e.g., provision of a bath or a hot-water supply. Although the local authority are obliged to make a grant if all the

necessary conditions exist, it is most important to remember that approval must be obtained before work is begun. As the checking of the conditions is a task for their officers, it is to be hoped that local authorities will not unduly delay their approval, for instance, by insisting on every application being referred to a committee whose approval is subject to council confirmation.

The grants which were formerly known as improvement grants give rise to more complication. They may be made, for instance, for improvements which are outside the scope of the standard grants scheme or are so expensive that the maximum standard grant which could be made is less than half the cost. The local authority may refuse to make such a grant, but, if they do, they may be required to give their reasons, which, in turn, may enable pressure to be put on them. (Incidentally grants of both types are now called improvement grants and so it seems likely that the distinction will now be drawn between "standard" grants and "discretionary" grants.)

Effects on conveyancing practice

The limits on grants and the conditions on which they can be made were adequately described at p. 459 *et seq.*, *ante*. It remains, therefore, to consider the consequences in conveyancing practice. The first point to note is that the statutory conditions, resulting from either form of grant, apply for ten years only; formerly they usually applied for twenty years. This is important not only because the incumbency exists for a shorter period but also because any repayment which has to be made in the meantime will be of a lesser sum. The reason is that the conditions cease to operate on repayment of a sum proportionate to the balance of the period during which they would otherwise operate.

The main restriction which applied after the making of a grant was that, for the specified period, the house, if it was not occupied by the applicant, a member of his family, or a person

becoming beneficially entitled on his death, had to be let or kept available for letting at a restricted rent. This meant that the house could not be sold with vacant possession to a purchaser who required it for his own occupation. A person who had received a grant might wish to remove to another house and this rule might prevent him from receiving the vacant possession value. His only remedy was to make a proportionate repayment on account of the grant (which nullified the conditions), but even this could not be done without the consent of the local authority. In practice local authorities seem to have accepted repayments readily, but the fear that they might wish to sell their houses with vacant possession and that the local authority might refuse consent is thought to have deterred some owner-occupiers from applying for grants.

The new Act contains amended rules (applicable to both standard and discretionary grants) which will remove this difficulty. In the first place, it is enacted that the house may be occupied by a person who, after three years, has become beneficially entitled to the interest of the applicant for the grant. It follows that, as soon as the three-year period from completion of the works has expired, it is safe for a purchaser to buy for his own occupation. Other conditions continue, for instance, that the house, if not occupied by an authorised person, must be kept available for letting within the prescribed rent limit, but these are not likely to be onerous.

Removal of restrictions

Secondly, even within those three years the restrictions can be removed by repayment of the part of the grant proportionate to the remainder of the ten-year period. The local authority are now bound to accept that repayment and so it is always possible to remove the restrictions. In practice, if it is almost three years since the works were completed it may pay to defer a sale until that time has passed.

Advice required of conveyancers

The conclusions to be drawn by a conveyancer are clear. First, he may have to advise as to the effect of obtaining a standard or discretionary grant. He must tell his client of the restrictions which will normally operate for ten years. If it is a landlord who is applying for the grant he must be advised as to the restrictions on the rent which can be charged (p. 460, *ante*). An owner-occupier must be informed of the necessity to make a partial repayment if he should wish to sell within three years to someone who will also be owner-occupier. His attention may be drawn to the other restrictions, for instance, on rent which can be charged and to the obligation to continue to use the premises as a private dwelling, but these are of little practical concern as few persons who occupy their own houses now decide to let them or use them for other purposes.

Of even more concern to solicitors are the steps they should take on behalf of vendors and purchasers (and, similarly, mortgagees) of houses in respect of which grants have been made. No formal document charging the land is executed when a grant is made but it is entered in the local land charges register. Some local authorities ask that particulars should be placed with the deeds or (even better) that an endorsement

should be placed on the conveyance to the applicant. These are not necessary steps in the interests of the authority but they go a long way towards ensuring that a vendor's solicitor is warned before he draws a contract.

The statutory restrictions are undoubtedly incumbrances during the ten years of their life. It follows that a contract of sale should be expressed, for instance, to be subject to the statutory restrictions applying as a result of the making of the (specified) improvement grant. The consequences of a failure to do this may be serious. The vendor can only make a good title by repaying the appropriate proportion of the grant and this he would be obliged to do. Even after three years the purchaser could not be compelled to take subject to the restrictions on use and letting of the house (although, in practice, he might well be prepared to do so if he were allowed a reduction in the purchase price of an amount materially less than the appropriate repayment of grant). It is doubtful whether the purchaser is deemed to have notice, under the doctrine in *Re Forsey and Hollebone's Contract* [1927] 2 Ch. 379, by reason of registration in the local land charges register. Even if the purchaser has imputed notice, as the incumbrance is removable a vendor who does not sell subject to it must procure its satisfaction. A purchaser who contracted during the first three years on the basis that he would obtain vacant possession would undoubtedly insist on repayment.

As grants become more common it would seem wise before drawing a contract for sale of a small house to ask the vendor whether one has been made (unless a recent local search is held which would disclose the restrictions). The solicitor is then able to make an appropriate provision in the contract if necessary.

Choice before prospective purchaser

A prospective purchaser who knows of the grant must decide whether he will contract to buy subject to the restrictions. They are very much more onerous during the first three years from completion of the work than during the next seven years. If he does not search until after contract and then he first learns of the grant and its consequences, he has a remedy against the vendor who failed to make disclosure. If three years will not elapse before the date when he wants to take possession of the house he should require the vendor to repay. Otherwise he may regard the remaining restrictions as having little or no practical importance, dependent on the type and likely future use of the house.

The problems caused by the making of improvement grants constitute an addition to the numerous examples of the impact of social legislation on conveyancing practice. The policy of successive governments seems to have been to draft statutes to carry out their proposals without regard to the manner in which they will affect the existing law of real property and conveyancing. It is left primarily to solicitors to take the necessary steps by adjustment of their procedure, and by appropriate advice to clients so that the rights of parties to every-day transactions shall be duly safeguarded. The burden is not a light one as it can be carried adequately only if we have a sound knowledge of the legislation and give careful thought as to its consequences.

J. GILCHRIST SMITH

Honours and Appointments

Mr. GEORGE BOUGHEN GRAHAM has been appointed Chancellor of the Diocese of Wakefield.

Mr. SIDNEY JAMES WILSON PRICE has been appointed Deputy Umpire under the National Service Act, 1948.

Landlord and Tenant Notebook

GENTLEMAN'S AGREEMENT AFTER DECONTROL

MANY who read the report of *Spyropoulos v. McClelland* (1959), *The Times*, 10th July, will have been reminded of the tearful client whose story begins with "the landlord was—or seemed—such a nice man." Seemed, if he is seeking to enforce some right which he had promised he would never enforce; was, if he has "sold the house over her head" (a popular expression—but adopted in the judgment of Scott, L.J., in *Eppe v. Rothnie* [1945] K.B. 562 (C.A.)), or if his niceness has not prevented him from being adjudicated bankrupt, from being certified insane, or even from dying.

The successful appellant in the case reported clearly did not share the weakness alluded to; but before examining the decision and comparing it with the recent authority of *City & Westminster Properties* (1934), *Ltd. v. Mudd* [1958] 2 All E.R. 733, some general observations on the effect of verbal agreements which vary or contradict or appear to vary or contradict written agreements may be in point.

Specific performance

The law relating to specific performance may be said to disregard the rule and the provisions of the Law of Property Act, 1925, s. 40; this because the remedy is an equitable one, and the defendant is seeking to rebut an equity. There was something like a "gentleman's agreement" in *Williams v. Jones* (1888), 36 W.R. 573, in which the documents provided for the grant of a lease of a shop and premises, to be built at a cost not exceeding £400, at a rent of £75. At the same time the parties agreed verbally that if the building programme cost more than £400 rent would be so much more. It came to £750 and the intending landlord refused to complete. The claim against him was dismissed. True, the court reasoned that the parol evidence explained and did not contradict the written agreement; but it would seem that the decision could have been soundly based on what was said in *Clarke v. Grant* (1807), 14 Ves. 519, in which an intending tenant had insisted, when signing an agreement for a sixty years' lease, that an alteration should be made respecting boundaries—to which the plaintiffs (four trustees) "unanimously agreed and at the same time declared to the defendant that they were proud to get such a tenant." The plaintiffs having repudiated this "gentleman's agreement," Grant, M.R., held that it would be against equity to enforce the written one.

Collateral terms

It is, of course, well established that something said about the condition of a building which a landlord is trying to let may be actionable though apparently irreconcilable with the terms of a written agreement subsequently signed. The leading case is *De Lassalle v. Guildford* [1901] 2 K.B. 215 (C.A.) in which a tenant, who had refused to hand over a signed counterpart until his wife had been assured by the defendant that the drains of the demised house were in order ("I give you my word"), ultimately recovered £75 damages for breach of warranty when he had found that they were not, and illness had ensued. It is important that the decision was based not merely on the fact that there was a warranty but on the fact that that warranty was collateral, though here again the reasoning does seem rather strained. For while A. L. Smith, J.'s judgment emphasised the point that the lease was entirely silent as to drains, he went on to observe

that there was a tenant's covenant to do inside repairs during the term and a landlord's covenant to do outside repairs, "which would, I suppose, include the drains which happened to be inside or outside the house"—proceeding to slay that giant by stating: "There is nothing in the lease as to the then condition of the drains—i.e., at the time of the taking of the lease, which was the vital point in hand. . . . The present contract or warranty by the defendant was entirely independent of what was to happen during the tenancy. It was what induced the tenancy, and it in no way affected the terms of the tenancy during the three years, which was all the lease dealt with." Which leaves one wondering what would have happened if the defendant, instead of flatly denying that he had said anything about drains, and if any of the defects were inside the house, had counter-claimed for failure to repair those defects, an obligation to keep in repair implying an obligation to put into repair (*Payne v. Haine* (1847), 16 M. & W. 541). But the fact that the plaintiff made such a claim in the alternative, which failed because of failure to notify, suggests that the trouble may have been outside trouble.

Rent tribunal jurisdiction

The question is not always an easy one, and in *R. v. Croydon and District Rent Tribunal; ex parte Langford Property Co., Ltd.* [1948] 1 K.B. 60, the dissenting judgment delivered by MacNaghten, J., showed that there was something to be said for giving effect to what the respondent tribunal had found to be the bargain arrived at between the applicant landlords and their tenants, and that that something might be the existence of a collateral agreement. Flats were let unfurnished and a notice board said: "Flats to let. Central heating, constant hot water." One of two tenants who referred their contracts under the Furnished Houses (Rent Control) Act, 1946, relying on the allegation that the rent included payment for the use of services, said that before entering into his tenancy agreement—which made no mention of central heating or of hot water—he had seen the notice, and the landlords' agents had referred to the central heating and hot water, and that he would not have taken the flat at the rent at which it was let if he had not understood that these would continue to be provided. The tribunal considered that there had been a collateral agreement giving them jurisdiction; Lord Goddard, C.J., and Lynskey, J., held that there had not: "If it was a term of the oral agreement it should have been included in the written agreement. If it was not so included by mistake, it might be open to the tenant to go to the courts and obtain rectification of the agreement." MacNaghten, J.'s view was that there was an implied obligation on the landlords, but he refrained from deciding the collateral agreement point as it would not matter what gave the tribunal jurisdiction.

Enforceability

The defendant tenant in *City & Westminster Properties* (1934), *Ltd. v. Mudd* [1958] 2 All E.R. 733 had entered into a fourteen years' lease containing a covenant by him to use the premises as and for showrooms, workrooms and offices only. He had in fact, to the plaintiff landlords' knowledge, slept on the premises during the currency of a previous three years' lease and when the fourteen years' lease was

negotiated there was considerable discussion about this clause, the landlords apparently being apprehensive about rent control and refusing to delete the clause. Ultimately their agent (who believed that the head lease forbade residential occupation) told the defendant over the telephone that the landlords would not object to his continuing to reside if he would sign the lease. The agent said in evidence that his attitude on paper was "business premises only," but that he was less emphatic when dealing with the tenant personally. Some five years later the landlords brought a forfeiture action on the ground of breach of the covenant. A number of defences—relating to construction of the covenant, asking for rectification and waiver—failed (see 102 SOL. J. 611), but Harman, J., found for the tenant on the ground that "the promise was that, so long as the tenant personally was tenant, so long would the landlords forbear to exercise the rights which they would have as to residence if he signed the lease. He did sign the lease on this promise and is, therefore, entitled to rely on it as long as he is personally in occupation of the shop."

In *Spyropoulos v. McClelland* the point arose in this way. The defendant had held a rent-controlled flat which became decontrolled on 6th July, 1957, and now sought the protection of the Landlord and Tenant (Temporary Provisions) Act, 1958. One of the conditions to be satisfied by an applicant is "that he has not unreasonably refused or failed to accept any proposal made by the owner for the grant of a new tenancy of the premises . . . being a tenancy for a term of not less than three years . . ."

The flat was a five-roomed one and the applicant was a widow who had taken in student nurses as lodgers since her husband's death, thus augmenting her old age pension. The landlord had offered her a three years' tenancy which forbade

the taking in of lodgers, accompanying the offer by a letter confirming that she might take in up to three student nurses and saying, "this holds good while there is no complaint by the other tenants . . . this concession is without prejudice to the legal agreement now being entered into, that is to say, it would not be legally binding on our clients." The county court judge held that this "gentleman's agreement" made all the difference and that the refusal which followed was unreasonable.

The Court of Appeal decided that, as the so-called gentleman's agreement had no legal force or validity and did not amount to a concession in law, it left the matter as before. The court granted the applicant a suspension of nine months from the date of the county court judge's order and also awarded her costs, holding that the Court of Appeal was not precluded from so doing by the Landlord and Tenant (Temporary Provisions) Act, 1958, s. 4 (2).

At first sight, the decision may seem to be at variance with that of Harman, J., in *City & Westminster Properties (1934), Ltd. v. Mudd*, and the fact that Harman, J., was careful to limit the scope of the non-enforceability to the grantee of the lease—his judgment clearly implied that an assignee would not be entitled to reside in the premises—would hardly justify the drawing of a distinction: the 1958 Act, while it provides for "transmission on death" in s. 1 (2), goes out of its way to declare that the "occupier" has no estate or interest or any power to create such: s. 2 (4). But whereas the landlords' agent in *City & Westminster Properties (1934), Ltd. v. Mudd* was clearly making a promise on the strength of which the tenant signed the lease, the plaintiff in *Spyropoulos v. McClelland* showed, by his or his agent's references to "legal agreement" and "legally binding," that the "promise" was valueless in law.

R. B.

HERE AND THERE

ELEVEN-YEAR OBITUARY

ONE of the ironies of reading the serious obituary notices in *The Times* is that it is only when we are told that Sir A. Poynter-Vorder, that indefatigable Parliamentarian, and Miss Upsa Dayzey, the brilliant child psychologist and juvenile court magistrate, are dead that most of us become aware, with a faint surprise, that they were ever alive. It is ironical too that while so many of the great and good live in so much deeper an obscurity than they would readily believe, there is a man in Death Row at St. Quentin Prison, California, who, whenever and however his debt to mortality is called in, will not find the mind of the world a blank about his personality. For eleven years his obituary has been writing itself and with each passing year it has become increasingly remarkable. In 1948 he was condemned to death for kidnapping and rape. Since then he has lived in Cell 2455 Death Row fighting for every hour of his eleven years' survival. From the commonplace obscurity of a convicted criminal he has raised himself to the status of a widely read author of two remarkable books and has become a self-taught lawyer able by sheer ingenuity to hold off the end to which the law had doomed him. For single-handed tenacity there has been no siege like it, for in all essentials it is a siege. The man's name is Caryl Chessman and the California Supreme Court has recently upheld unanimously the sentence of death passed upon him, but even now no one can be sure that this is the end. He is well named

Chessman, for his achievement reminds one of nothing so much as that grim game of chess which the Knight plays with Death in "The Seventh Seal." Even now he may have another move.

THE LONG SURVIVAL

CHESSMAN was in his middle twenties when he was identified as the "red light bandit" who had held up and assaulted nearly twenty girls, forcing them into a car fitted with a red spotlight. The "kidnapping" of which he was convicted was a legal technicality but by Californian law it carried the death penalty, for in strict law, to force a person even a few yards for a criminal purpose amounted to kidnapping. Chessman has always strenuously denied that he was guilty of the crimes charged against him. That he was a gunman and a hoodlum with a bad record he has never denied. Rather he glories in it, although as a criminal he was no great success, moving in and out of gaol. It was when he came face to face with death that his genius (if that is the right word) asserted itself. "Depend upon it, sir," said Dr. Johnson in a celebrated epigram, "when any man knows he is to be hanged in a fortnight it concentrates his mind wonderfully." They rate Chessman's "I.Q." at 178 and his mental concentration is the one thin thread on which his life has hung for eleven years. There was one morning when he awoke at seven with twenty-seven more hours to live. Early in the afternoon a judge granted another stay of execution and he was brought to the

prison office to hear the news. The judge who sentenced him is dead. So are several of the jury who convicted him. Literally scores of other condemned prisoners have tramped past his cell on the way to the cyanide gas chamber and sometimes the wind has brought the sickly peach blossom smell through the window of his cell. Several others may owe their lives to the self-taught legal knowledge which enabled him to advise them on their appeals. Amid all this he had the spirit to become engaged to be married to a woman who visited him in his cell.

THE ACHIEVEMENT

ENGLISH justice is swift and neat in reaching its conclusions and the English reaction to such a case as this is that it is inhuman to allow the game of life and death to be so protracted. Granted it may diminish the respect for the law, but what is inhuman about it? If the initial trial were indefinitely

delayed or protracted, or if, on conviction, the sentence were kept in doubt or if a reprieve were constantly dangled before the condemned man's eyes, that would be inhuman. But here all the initiative has come from Chessman's own ingenuity and tenacity. He is only doing what we too are all doing. We are all condemned to death and it is equally unworthy of rational beings either to ignore or to be morbid about the one certain event of our lives. It should concentrate our minds wonderfully. Most of us, like Chessman, fight off the day of execution for all we are worth. But, in facing the ultimate reality, Chessman has achieved a stature which would never have been his as a petty hand-to-mouth hoodlum. Whatever the ultimate outcome he has gained more than time. He has found something in himself that might have been buried for ever.

RICHARD ROE.

IN WESTMINSTER AND WHITEHALL

ROYAL ASSENT

The following Bills received the Royal Assent on 16th July:—

Bucks Water Board.
Dog Licences.
Reading and Berkshire Water, etc.
Rights of Light.
Street Offences.
Town and Country Planning.
Weeds.

HOUSE OF LORDS

PROGRESS OF BILLS

Read First Time:—
Finance Bill [H.C.] [16th July.
Read Second Time:—
Edinburgh College of Art Order Confirmation Bill [H.C.] [16th July.
Education Bill [H.C.] [14th July.
Export Guarantees Bill [H.C.] [10th July.
Leith Harbour and Docks Order Confirmation Bill [H.C.] [10th July.
National Galleries of Scotland Bill [H.C.] [16th July.
Pier and Harbour Provisional Order (Gloucester) Confirmation Bill [H.C.] [16th July.
Pier and Harbour Provisional Orders (Medway Lower Navigation) Confirmation Bill [H.C.] [16th July.
Town and Country Planning (Scotland) Bill [H.L.] [14th July.
To re-enact in a form in which they apply to Scotland the provisions of the Town and Country Planning Act, 1959.
Read Third Time:—
Mental Health Bill [H.C.] [16th July.
Occupiers' Liability (Scotland) Bill [H.L.] [16th July.
Wages Councils Bill [H.L.] [15th July.
In Committee:—
New Towns Bill [H.C.] [16th July.

HOUSE OF COMMONS

PROGRESS OF BILLS

Read First Time:—
Deferred Payments Personal Credit Schemes (Scotland) Bill [H.C.] [15th July.
To regulate the deferred payment terms by which goods and services are purchased under forms of personal credit schemes in Scotland.

QUESTIONS

DELAYS IN REGISTRATION OF TITLE

The SOLICITOR-GENERAL said that on average, approximately eight weeks were taken to complete first registration of title and

seven weeks to register dealings in land already registered. Every effort was being made to reduce the delay by recruiting more staff and by requiring them to work overtime. [14th July.

STATUTORY INSTRUMENTS

Calf Subsidies (Scotland) (Variation) Scheme, 1959. (S.I. 1959 No. 1186.) 5d.
Draft Cotton Doubling Reorganisation Scheme (Confirmation) Order, 1959. 8d.
Draft Cotton Spinning Reorganisation Scheme (Confirmation) Order, 1959. 8d.
Draft Cotton Weaving Reorganisation Scheme (Confirmation) Order, 1959. 8d.
Fertilisers (United Kingdom) Scheme, 1959. (S.I. 1959 No. 1192.) 6d.
Import Duties (Temporary Exemptions) (No. 7) Order, 1959. (S.I. 1959 No. 1204.) 4d.
Parking Places (Extension outside London No. 1) Order, 1959. (S.I. 1959 No. 1178.) 4d.
Performing Right Tribunal (Amendment) Rules, 1959. (S.I. 1959 No. 1170.) 5d.
Purchase Tax (No. 3) Order, 1959. (S.I. 1959 No. 1176.) 4d.
Retention of Cables and Sewers under a Highway (County of York, East Riding) (No. 1) Order, 1959. (S.I. 1959 No. 1174.) 5d.
Stopping up of Highways Orders:—
County of Derby (No. 13). (S.I. 1959 No. 1175.) 5d.
City and County Borough of Liverpool (No. 4). (S.I. 1959 No. 1160.) 5d.
London (No. 27). (S.I. 1959 No. 1161.) 5d.
County of Sussex, East (No. 3). (S.I. 1959 No. 1173.) 5d.
County of Sussex, West (No. 5). (S.I. 1959 No. 1162.) 5d.
County Borough of West Ham (No. 1). (S.I. 1959 No. 1158.) 5d.
County Borough of West Ham (No. 2). (S.I. 1959 No. 1159.) 5d.
County of Wilts (No. 6). (S.I. 1959 No. 1163.) 5d.

SELECTED APPOINTED DAYS

July
13th **Performing Right Tribunal** (Amendment) Rules, 1959. (S.I. 1959 No. 1170.)
National Insurance (Determination of Claims and Questions) Amendment (No. 2) Regulations, 1959. (S.I. 1959 No. 1154.)
National Insurance (Industrial Injuries) (Determination of Claims and Questions) Amendment Regulations, 1959. (S.I. 1959 No. 1156.)
17th **National Insurance Act, 1959** (Commencement) Order, 1959. (S.I. 1959 No. 1212.)

NOTES OF CASES

The Notes of Cases in this issue are published by arrangement with the Council of Law Reporting, and full reports will be found in the Weekly Law Reports. Where possible the appropriate page reference is given at the end of the note.

House of Lords

NEGLIGENCE: SAFE SYSTEM OF WORK: REASONABLE CARE: WEIGHT TO BE GIVEN TO EVIDENCE AS TO GENERAL PRACTICE: WHETHER APPELLATE COURT ENTITLED TO INTERFERE WITH JURY'S AWARD OF DAMAGES

In re Cavanagh and Ulster Weaving Co., Ltd.

Viscount Simonds, Lord Tucker, Lord Keith of Avonholm, Lord Somervell of Harrow and Lord Jenkins. 18th June, 1959
Appeal from the Court of Appeal in Northern Ireland.

The plaintiff, who was employed by the defendants as a labourer, was seriously injured when he fell from a crawling ladder, which had no handrail, on to a glass roof whilst carrying a bucket of cement in the course of his employment on the roof of the defendants' factory. At the time of the accident the plaintiff was wearing rubber boots provided by the defendants, the soles of which were wet and slippery. As a result of his injuries the plaintiff's right arm had to be amputated three inches above the elbow. In an action against the defendants alleging negligence and breach of statutory duty the plaintiff was awarded £6,520 by the jury which was reduced to £5,868 in view of a finding of contributory negligence. The plaintiff did not allege that the system adopted by the defendants for the carrying of cement on the roof was contrary to the general practice of the trade, but at the trial the defendants called expert evidence, which was not seriously challenged, that this "set up [the system in question]" was "perfectly in accord with good practice." The Court of Appeal (Curran, L.J., and Sheil, J., Lord MacDermott, C.J., dissenting), set aside the jury's verdict on the grounds that there was no evidence of negligence fit to be left to the jury, the plaintiff having failed to show, in the words of Lord Dunedin in *Morton v. William Dixon & Co., Ltd.* [1909] S.C. 807, 809, that "the thing which" the employer "did not do was a thing which was commonly done by other persons in like circumstances" or "that it was a thing which was so obviously wanted that it would be folly of anyone to neglect to provide it." The plaintiff appealed.

VISCOUNT SIMONDS, for allowing the appeal, said that he concurred in the opinion of Lord Tucker. The evidence given by the expert called for the defence in regard to what was called "the set-up," which was not seriously challenged, was of very great weight but it could not be said that it was so conclusive as to require the trial judge to withdraw the case from the jury. The error of the majority of the Court of Appeal lay in treating evidence as conclusive which was not conclusive, however great its weight, particularly where it had to be weighed against other evidence.

LORD TUCKER said that the important question in the case was the bearing of the evidence as to practice on the ultimate decision of the judge or jury. He (his lordship) had already expressed his views on the value of this kind of evidence in *Morris v. West Hartlepool Steam Navigation Co.* [1956] A.C. 552, but it had not been necessary for him in that case to refer to the language of Lord Dunedin in *Morton v. William Dixon & Co., Ltd.*, *supra*. He would however desire to express his agreement with what was said by Lord Cohen in *Morris'* case ([1956] A.C. 552, 579): "When the court finds a clearly established practice 'in like circumstances,' the practice weighs heavily in the scale on the side of the defendant and the burden of establishing negligence, which the plaintiff has to discharge, is a heavy one." Later Lord Cohen equated the word "folly" as used by Lord Dunedin to "unreasonable or imprudent" thereby emphasising that Lord Dunedin could not have been intending to extend the employer's common-law liability beyond that which had been laid down in *Smith v. Charles Baker & Sons* [1891] A.C. 325, and many subsequent cases in the House of Lords. To give the word "folly" any other meaning would necessarily have this result. He (his lordship) would allow this appeal on the ground that the jury's verdict on common-law negligence should not have been disturbed. In those circumstances it

was not necessary to consider the question of breach of statutory duty. As to the question of damages, although the amount awarded by the jury was high, it was not, in his opinion, so extravagant as to require an appellate court to interfere with the jury's verdict.

LORD KEITH OF AVONHOLM agreeing, said that, in his opinion, Lord Dunedin was laying down no principle of law but was stating the factual framework within which the law would fall to be applied.

LORD SOMERVELL OF HARROW, for allowing the appeal, said that Lord Dunedin's observation was in its context clearly only intended to apply where the practice proved was clearly proved and where the circumstances covered by the practice were precisely similar to those in which the accident happened.

LORD JENKINS agreed that the appeal should be allowed. Appeal allowed.

APPEARANCES: *James McSparran, Q.C., Charles Stewart, Q.C., and J. P. Higgins* (of the Bar of Northern Ireland) (*Neil Maclean & Co.*, for *D. P. Marrinan*, Belfast); *F. A. L. Harrison, Q.C., Robert Lowry, Q.C., and C. B. Shaw* (of the Bar of Northern Ireland) (*Goldingham, Wellington & Co.*, for *Henry J. Catchpole*, Belfast).

[Reported by J. A. GRIFFITHS, Esq., Barrister-at-Law]

Court of Appeal

DIVORCE: ESTOPPEL: EVIDENCE OF CRUELTY IN PREVIOUS PROCEEDINGS IN SUPPORT OF ALLEGATION OF CONSTRUCTIVE DESERTION

Fisher v. Fisher

Hodson, Sellers and Harman, L.J.J. 16th June, 1959

Appeal from Sir Reginald Sharpe, Q.C.

In September, 1954, a husband petitioned for a decree of nullity on the ground of non-consummation, the wife cross-prayed for dissolution of the marriage on the ground of cruelty. The commissioner found that the marriage had been consummated, that the wife's allegations regarding the husband's conduct were proved, but that they did not amount to cruelty and he dismissed both the petition and the cross-prayer. The wife left the matrimonial home in November, 1954, and never returned. In November, 1957, the husband petitioned for divorce on the ground of desertion and the wife cross-petitioned for divorce on the ground of constructive desertion. In her answer she relied on the allegations which she had raised in her previous proceedings and on some further allegations of expulsive conduct, which had not been raised previously. The commissioner held that the wife was estopped from putting forward her case of desertion since her defence to the husband's charge and her own cross-charge involved the same questions as those which had been determined in the previous proceedings. The wife appealed.

HODSON, L.J., said that the commissioner, in holding that the wife was estopped, followed the decision of Willmer, J., in *Bright v. Bright* [1954] P. 270, 288, where he said that a wife on a petition for divorce on the ground of desertion was estopped from raising certain matters not specifically raised before on the ground that those allegations could well have been brought forward as part of the previous case of cruelty if they were allegations of substance. That part of the decision was disapproved of by the Divisional Court in *Cooper v. Cooper* (No. 2) [1955] P. 168, and in his lordship's view, could not be supported. In the present case there was no question of the wife's allegations having been rejected and therefore there was no question of her seeking to re-agitate in later proceedings matters of fact which had been specifically determined against her in earlier proceedings. As to the allegations of expulsive conduct, the fact that details of such conduct had been excluded from a previous suit based on cruelty did not preclude them from being relied on in a subsequent case based on desertion. It was the duty of the

court on the facts to give the wife an opportunity of having heard her case on desertion and her case in so far as it consisted of a denial of her husband's allegations of desertion. The appeal should be allowed and the case sent back for re-trial before the same commissioner.

SELLERS and HARMAN, L.JJ., delivered concurring judgments. Appeal allowed.

APPEARANCES: *F. B. Purchas (Marsh & Feriman, Worthing); N. H. Curtis-Raleigh (Cyril E. Wheeler, Brighton).*

[Reported by J. D. PENNINGTON, Esq., Barrister-at-Law]

RATING: SECTION 8 RELIEF: ZOOLOGICAL SOCIETY

In re North of England Zoological Society; North of England Zoological Society v. Chester Rural District Council

Lord Evershed, M.R., Romer and Pearce, L.JJ.

18th June, 1959

Appeal from Vaisey, J. ([1958] 1 W.L.R. 1258; 102 Sol. J. 915).

The plaintiff society was incorporated on 9th May, 1934, as a company limited by guarantee. Clause 3 of the society's memorandum of association provided: "The objects of the society are: (a) To acquire and take over . . . and conduct as a scientific and educational undertaking the business heretofore carried on as the Chester Zoological Gardens" by another company. "(b) To promote, facilitate and encourage the study of biology, zoology and animal physiology . . . botany and horticulture and all kindred sciences, and to foster and develop among the people an interest in and knowledge of animal life. (c) To establish, equip and carry on and develop zoological parks or gardens and living zoological collections . . . (d) To establish sanctuaries for all kinds of wild life, particularly animal and bird sanctuaries . . ." Then followed a long list of other objects including, *inter alia*, the building and provision of cafés, reading-rooms and other buildings for the convenience of visitors, the holding of public meetings, publishing books, raising funds, etc. The society carried on an organisation known as the Chester Zoo and owned and managed zoological gardens containing some 730 animals, birds and reptiles and cultivated tropical and other exotic vegetation. The gardens were visited annually by over 500,000 persons of whom 45,000 were schoolchildren. The principal source of its income was from admission fees. The society claimed to be entitled to the benefit of the provisions of s. 8 of the Rating and Valuation (Miscellaneous Provisions) Act, 1955, in respect of its zoological gardens and took out a summons to determine whether on the true construction of s. 8 (1) (a) of that Act it was an organisation which was not established or conducted for profit, and whose main objects were charitable or were otherwise concerned with the advancement of religion, education or social welfare. Vaisey, J., held that the society came within the subsection since the main object of the society was charitable. The rating authority appealed.

LORD EVERSLED, M.R., said that in order to qualify for exemption the society, which was plainly an organisation within the meaning of the section, must show that affirmative answers should be given to the questions: (1) Was this an organisation which was not established or conducted for profit? (2) Was it one whose main objects were charitable or otherwise concerned with the advancement of education? As to the second question, he (his lordship) agreed with Vaisey, J., that the answer to the question what were the main objects of this society was to be found from reading paras. (a), (b) and (c) of its memorandum of association, and this, together with the evidence which had been adduced, showed that this society had conducted and did conduct this zoo not as a place of amusement or as a show place, but, by and large, as an educational or as a scientific and educational undertaking. Taking as Farwell, J., did in the case of the London Zoo—*In re Lopes* [1931] 2 Ch. 130—a broad view of this society's objects, he (his lordship) thought that they satisfied the test that they were charitable. As to the first question, was the society one which was conducted for profit, he had no hesitation in answering that question negatively. In giving that answer he was now assuming the correctness of his answer upon the main question that this was an educational charity.

If it were otherwise, if the truth was that this zoo was an amusement park, then the answer to the first question might be very different. In the circumstances, it should be answered in the negative. He therefore concluded that the society had satisfied both branches of the test in s. 8 (1) of the Act, and, accordingly, the appeal should be dismissed.

ROMER and PEARCE, L.JJ., delivered concurring judgments. Appeal dismissed.

APPEARANCES: *G. D. Squibb, Q.C., and D. G. Widdicombe (Preston, Lane-Claydon & O'Kelly, for Gamon & Co., Chester); H. I. Willis, Q.C., and J. F. Coplestone-Boughey (Field, Roscoe and Co., for Ousley-Smith & Co., Chester).*

[Reported by J. A. GRIFFITHS, Esq., Barrister-at-Law]

Chancery Division

COMMITTAL ORDER MADE ON EX PARTE APPLICATION IN COUNTY PALATINE COURT: EX PARTE APPLICATION TO HIGH COURT: WHETHER ORDER SHOULD BE MADE HIGH COURT ORDER

Bernstein v. Bernstein

Roxburgh, J. 25th June, 1959

Ex parte motion.

On 8th May, 1959, the Court of Chancery of the County Palatine of Lancaster, upon an *ex parte* motion by the applicant, made an order committing the respondent, the applicant's husband, to Strangeways Gaol for his contempt in removing his daughter, a ward of that court, out of the United Kingdom and out of the jurisdiction of the County Palatine Court without leave and preventing her from being returned to the custody of the applicant. The respondent had taken the ward out of the United Kingdom on 30th April, 1959, and had not returned. The applicant now applied *ex parte* under s. 15 of the Court of Chancery of Lancaster Act, 1850, for an order making that part of the order of the County Palatine Court which committed the respondent to prison an order of the High Court. Section 15 of the 1850 Act provides that where a decree or order made by the County Palatine Court cannot be enforced by reason of the party to be bound not being within its jurisdiction "it shall be lawful" for the High Court of Chancery upon application by a person entitled to the benefit of such decree or order to make such decree or order an order of the High Court of Chancery. By R.S.C., Ord. 52, r. 3, except in certain circumstances, "no motion shall be made without previous notice to the parties affected thereby" unless the court or judge is satisfied "that the delay caused by proceeding in the ordinary way might entail irreparable or serious mischief."

ROXBURGH, J., reading his judgment, said that the phrase "it shall be lawful" in s. 15 of the 1850 Act indicated that he had a discretion in the matter. He had come to the conclusion that he ought not to extend an *ex parte* committal order unless he would have jurisdiction himself to make such an order in the circumstances prevailing, not on 8th May, but to-day and, in his judgment, he would not have jurisdiction to do so. His lordship was bound by the rules and under R.S.C., Ord. 52, r. 3, had no jurisdiction to order committal or attachment *ex parte*, unless satisfied that "the delay caused by proceeding in the ordinary way would or might entail irreparable or serious mischief." He was not so satisfied; the difficulty would be to find the respondent within the jurisdiction of the court, if he ever came within it, and that would be so whether he acceded to or refused the present applicant. If the applicant took the appropriate steps promptly when he was found, he would not have come here with impunity. As his lordship would have had no jurisdiction to make an *ex parte* committal order himself in the circumstances in evidence to-day, he was not prepared to extend to cover that jurisdiction an *ex parte* order made in another jurisdiction. Motion dismissed.

APPEARANCES: *L. A. Cohen (Hatchett, Jones & Co., for Theo. M. Cohen, Manchester).*

[Reported by Miss J. F. LAMB, Barrister-at-Law]

INCOME TAX: COST OF WORK-IN-PROGRESS FOR COMPUTATION OF PROFITS: WHETHER INDIRECT EXPENDITURE INCLUDED

Duple Motor Bodies, Ltd. v. Ostme (Inspector of Taxes); Duple Motor Bodies, Ltd. v. Inland Revenue Commissioners

Vaisey, J. 3rd July, 1959

Appeal from the Commissioners for the Special Purposes of the Income Tax Acts.

The question on this case stated was whether in arriving at the cost of work-in-progress of a company, which built motor car bodies, the direct cost of material and labour only (known as the "direct cost" method) should, as the company contended, be taken into account; or whether there should be added, as the Crown contended, to the direct cost, a proportion of indirect expenditure (known as the "on-cost" method). The Commissioners stated: "On the evidence adduced before us, we find—and this has naturally caused us difficulty—that the accountancy profession as a whole is satisfied that either method will produce a true figure of profit for income tax purposes. In this state of affairs, we find that it is very much a matter of policy for the decision of the directors of a company which method should be used." On behalf of the company it had been contended before them that the straightforward method of direct cost which did not involve elaborate calculations and arbitrary estimations of overhead charges was the better and simpler method. For the Crown it was contended that to exclude all overhead expenditure from the cost of work-in-progress was in effect to allocate the whole of such expenditure to the sales which had been effected during the accounting period, and that at least some part of indirect expenditure had been expended on work-in-progress and that it could not be correct to allocate the whole of this indirect expenditure to sales which had been effected during the accounting period. The Commissioners in their decision stated that they preferred the "on-cost" method, and that that method should be applied in arriving at the cost of work-in-progress.

VAISEY, J., said that he did not find that the Commissioners ever contradicted or went back upon their previous finding that either the "on-cost" method or the "direct cost" method was permissible and consonant with income tax principle. They had elaborated the advantages of the "on-cost" method, but it seemed to him that the whole of the later part of this case was overshadowed by their quite definite finding that the accountancy profession as a whole was satisfied that either method was admissible. His lordship did not think that their own preference for the "on-cost" method ought to limit or throw doubt on their finding to which he had referred. He thought that the case stated was one which he had to accept as regards the finding, and he did accept it. The result would be that this appeal by the company would be allowed and the cross-appeal by the Crown would be dismissed. An appeal and a cross-appeal in respect of profits tax on the same point would respectively be allowed and dismissed.

APPEARANCES: Roy Borneman, Q.C., and H. Major Allen (Wilkinson); Geoffrey Cross, Q.C., and Alan S. Orr (Solicitor, Inland Revenue).

[Reported by Mrs. IRENE G. R. MOSES, Barrister-at-Law]

Queen's Bench Division

HABEAS CORPUS: WHETHER WRIT ISSUABLE TO CUSTODIANS IN A PROTECTORATE: WHETHER SECRETARY OF STATE FOR THE COLONIES AMENABLE TO THE WRIT

Ex parte Mwenya

Lord Parker, C.J., Slade and Winn, J.J.

3rd July, 1959

Application for leave to issue a writ of *habeas corpus ad subjiciendum*.

In June and October, 1957, the Governor of Northern Rhodesia made restriction orders pursuant to powers stemming from the Emergency Regulations, 1956, of Northern Rhodesia requiring

one Andrew Mwenya, a native of Northern Rhodesia, to remain in the district of the Chief Mporokoso. At all material times Northern Rhodesia was a protectorate and, according to an affidavit by the Secretary of State for the Colonies, was "a foreign country within which Her Majesty has power and jurisdiction by treaty, grant, usage, sufferance and other lawful means within the meaning of the Foreign Jurisdiction Act, 1890," not recognised by Her Majesty "as, nor is it, part of Her Dominions, but she has power and jurisdiction within the same." Mwenya applied for a writ of *habeas corpus* directed to the Governor of Northern Rhodesia, the District Commissioner of the Mporokoso District and the Secretary of State for the Colonies on the ground that he was unlawfully detained in that the Order in Council under which the Emergency Powers Regulations were made, and consequently, the restriction orders, were invalid. The respondents took the preliminary objection to the jurisdiction of the court to issue the writ to custodians in a protectorate in respect of a detention in that protectorate, the court's decision on which was given on the assumptions (which were not admitted), (a) that the applicant was a British subject; (b) that, *inter alia*, the Order in Council was invalid; and (c) that Mwenya's confinement was of such a nature as to enable him, if he had been confined in this country, to apply for the writ. Although under the constitution of and legislation in regard to Northern Rhodesia the Secretary of State had certain powers which extended beyond mere advice, his approval or consent to the restriction orders were not required and he took no part in the detention. On 18th June, the court dismissed the application as against the Governor and the District Commissioner and on 19th June as against the Secretary of State, its reasons being reserved in each case.

LORD PARKER, C.J., reading the judgment of the court, said that the expression "foreign dominion of the Crown" in s. 1 of the Habeas Corpus Act, 1862, passed as a result of the decision in *Ex parte Anderson* (1861), 3 E. & E. 487, where the writ issued to Canada, did not mean a foreign territory over which the Sovereign exercised dominion in the sense of power but referred to the territorial dominions of the Sovereign overseas. It was true that on that construction it was not altogether easy to see what was the distinction between a colony and a foreign dominion of the Crown but *R. v. Earl of Crewe; ex parte Sekgome* [1910] 2 K.B. 576 was clear authority for that construction. In the state of the authorities, and having regard to the conflict between the views of Vaughan-Williams and Farwell, L.J.J., and that of Kennedy, L.J., in that case, it was necessary to consider the matter by reference to first principles. *Habeas corpus* was a prerogative writ, namely, a manifestation of the sovereignty of the Crown, the power to issue which was derived from and was no more extensive than such sovereignty. The prerogative was part of the common law of this country and existed by force and virtue of the law and, therefore, the writ could only lawfully be issued in cases where the common law or statute permitted or required the Sovereign to issue it. The concept of sovereignty in its aspect of power was essentially related to the area throughout which it was lawfully exercised without restraint or hindrance by any competing sovereignty, and the undoubted duty of the Sovereign to protect her subjects and the undoubted right of the subject to protection were limited to protection in the Sovereign's dominions. The court could not accede to the argument to the contrary which involved a trespass on the sovereignty of other countries. There was no distinction between the case of a foreign territory which was, as here, to all intents and purposes wholly under the subjection of Her Majesty and one where the subjection was only partial. Nor was there any ground for saying that the writ would issue into foreign territory whenever the gaoler was a Crown servant. For those reasons the court had dismissed the application against the Governor and the District Commissioner. As to the application against the Secretary of State, the writ would issue to a person who had constructive custody in the sense of having power or control over the body, but there was here no custody by the Secretary of State in any form. The fact that he could advise and attempt to persuade Her Majesty to cause the body to be brought up did not mean that he had such a control as would enable the writ to issue. While there might be special circumstances in which a Secretary of State would be amenable to the writ, there was nothing in the facts of the case which would justify the court in calling upon him to produce the body. His

lordship added that nothing they had said should be read as expressing the view that if the Governor or District Commissioner visited this country they would be amenable to the writ in respect of the detention complained of merely by reason of their physical presence here. Application dismissed.

APPEARANCES: *Neil Lawson, Q.C.*, and *Bryan Anns (Potel, Tattersall & Lake)*; *Sir Reginald Manningham-Buller, Q.C.*, A.-G., and *J. R. Cumming-Bruce (Treasury Solicitor)*; *B. J. M. MacKenna, Q.C.*, and *J. G. Le Quesne (Charles Russell & Co.)*.

[Reported by Miss J. F. LAMB, Barrister-at-Law]

CORRESPONDENCE

[The views expressed by our correspondents are not necessarily those of "The Solicitors' Journal"]

Crossing of Warrants relating to Sale of Fractional Shares

Sir,—Once again I have received a number of warrants relating to the sale of fractional shares and standing in joint names and crossed account payee. My experience is that in so many cases the joint holders, who are presumptively trustees, have no banking account which causes an immense amount of additional work for very little. In this case, I was able to persuade the bankers to delete the crossing. Is there any valid reason why this practice should not cease, for the loss or misapplication of cheques must be a very small percentage of the whole and, in the case of the sale of fractional shares, the amounts are, as often as not, under £1 in value?

H. C. V. JONES.

London, E.C.4.

Specimen Epitome

Sir,—With reference to the specimen epitome published on p. 551, *ante*, one preliminary point which strikes us is, why is

the date of the will of Edward Haddock shown? Surely the purchaser's solicitor is neither concerned nor entitled to know the date of the will or anything of its contents.

Further, we would suggest that if the date of death is to be shown at all it should be shown as part of the particulars of the probate where in fact it appears in the grant as presumably no other evidence of death will be produced. This item would then read "1st July, 1931. Probate of the will of Edward Haddock who died on 17th February, 1931, granted out of . . ."

In the specimen epitomes of abstracts of title given in the Sixth Schedule to the Law of Property Act, 1925, particulars of the wills and deaths are given in ordinary type and the note on the head shows that these can therefore be ignored. See, for instance, the will of W. Jones dated 4th February, 1926, in specimen No. 1 and the will and death of W. Robinson on 4th June, 1927, and 1st December, 1927, in specimen No. 2.

ONIONS & DAVIES.

Market Drayton,
Shropshire.

"THE SOLICITORS' JOURNAL," 23rd JULY, 1859

ON the 23rd July, 1859, *THE SOLICITORS' JOURNAL* contained the following comment on proceedings in the Irish courts: "If the proper feeling of mutual regard . . . existed between the two branches of the profession we should not so often be shocked by the scenes daily witnessed in our Nisi Prius Courts. We have not words to express our . . . abhorrence of the conduct of the man who finding that neither the law nor the facts are on his side . . . hopes to gain an advantage by an indiscriminate and headlong attack upon his opposing attorney. The foulest motives, the base desire for gain, malignant feelings, petty revenge . . . are ascribed as the springs of action which set him in motion. The barrister ranges through the whole vocabulary of interpretative epithets and . . . showers them unsparingly on

his victim's head, and a man who is probably in every respect in birth, education and position, the equal, if not the superior, of his assailant, is forced to sit by . . . and behold with calmness, if he can, the laceration of his own character. If he rashly presume to interrupt or remonstrate he is reprimanded by the presiding judge and told, perhaps, that his counsel will have an opportunity to reply, or that counsel is merely making a statement and has not yet gone beyond the latitude of speech allowed on such occasions." Here is a news item: "We are informed on most trustworthy authority that the chief of the Russian Secret Police, M. Timascheff, director of what in Russia is called the 'third section' of the Czar's private Chancellerie, has arrived in London after having spent some weeks in secret at Paris."

REVIEWS

Oyez Practice Notes No. 35: Covenants, Settlements and Taxation. Second Edition. By G. B. GRAHAM, LL.B., of Lincoln's Inn, Barrister-at-Law. pp. 71. 1959. London: The Solicitors' Law Stationery Society, Ltd. 10s. 6d. net.

The first edition of this excellent little book, published in 1953, dealt with Pt. XVIII of the Income Tax Act, 1952, which consolidated various enactments designed to make more difficult the task of him who seeks to mitigate his liabilities to the Revenue by means of covenants and settlements; but, to say the least, consolidation has not made these provisions either simple or straightforward. The present edition necessarily goes further and considers also ss. 20, 21 and 22 of the Finance Act, 1958, which made important changes in the law relating to settlements on children, revocable settlements and settlements made abroad, and discretionary settlements. It also embodies the effects of decisions of the courts reported since 1953, notably in *Re Hooper's Settlement* (1955), 48 R. & I.T. 125; *Inland Revenue Commissioners v. Broadway Cottages Trust* [1955] Ch. 20, and *Inland Revenue Commissioners v. National Book League* [1957] Ch. 488. Accumulations and discretionary settlements are growing in popularity, but in tax planning, as the author states, nothing is easier when trying to avoid the Scylla of Pt. XVIII of the 1952 Act than to

find oneself wrecked upon the Charybdis of estate duty. This danger is ever present in the author's mind, as also is the fact that, in the case of capital settlements, the settlements must not be invalid as incompletely constituted or as tending to a perpetuity or as uncertain. The consequence is a balanced approach to the several problems under discussion.

As in the case of the earlier edition, the book is divided into two parts: Pt. I setting out the law relating to settlements, and Pt. II applying the law to income settlements and settlements of capital, while an appendix contains thirteen useful precedents of settlements of different kinds and a declaration of trust establishing trustees for charitable purposes. The text of each part is skilfully arranged in sections with a clear and concise summary of the subject-matter of each section as a headnote. An outstanding feature is the marked clarity of the exposition, so that no words are wasted but a great deal of valuable information and practical guidance is brought together within the fifty-seven pages of the text. As a Practice Note on a branch of the law which has its full share of difficulties and pitfalls the present work is exceptional value at 10s. 6d. Any practitioner who finds the tax implications of covenants and settlements perplexing will find the book an interesting adjunct to his library.

Trust Accounts. By PETER M. B. ROWLAND, M.A., LL.B., Barrister-at-Law. Second Edition. London: Butterworth & Co. (Publishers), Ltd. £2 net.

Candidates for the profession of solicitor will probably always resent, in some degree, having to take an examination in a special brand of accountancy as well as in law, but at least students of to-day have no legitimate cause for complaint with the text-books that are available to speed this part of their labours. This book, with its ingenious binding, designed so that the volume may lie open at two places at once, thereby enabling the extended practical illustrations to be perused in comfort without losing one's place in the text, is a treat to handle, and quite as much of a joy to read as the nature of the subject permits. In the five years since the first edition appeared, the work's reputation among students has become secure. The thoroughness of its treatment of the law and principles of trust accountancy, and of their application in practice, is exemplary. There are, moreover, very full appendices which bring the subject to life with detailed instances, and which also touch upon intestacies, solicitors and the rival double-entry system. It is worth noting that the second edition is completely up to date, recent decisions having been incorporated, and that there are so many pieces of sound advice useful to the practitioner that it will certainly pay those raised in an older school to acquire the book for everyday use.

Police Law. An arrangement of Law and Regulations for the Use of Police Officers. Fifteenth Edition. By the late CECIL C. H. MORIARTY, C.B.E., LL.D., and W. J. WILLIAMS, O.B.E., B.Sc., LL.B. pp. xx and (with Index) 623. 1959. London: Butterworth & Co. (Publishers), Ltd. 15s. 6d. net.

A new edition of this established text-book for policemen is always welcome. Much of the revision necessary for the present edition was approved by Dr. Moriarty before his death and the work was completed upon the lines which he himself laid down. This edition includes references to several very recent statutes of importance to the policeman, including the Litter Act, 1958, and the Road Transport Lighting Act, 1957, as amended by the Road Transport Lighting (Amendment) Act, 1958. However, we think that the section on the Hire-Purchase Act, 1938, might have included a reference to the Advertisements (Hire-Purchase) Act, 1957, and the short note on musical copyright does not mention the Dramatic and Musical Performers' Protection Act, 1958. The Musical Copyright Acts of 1902 and 1906, which are cited in this note, were repealed by the Copyright Act, 1956. The work is fully indexed (the entry "Riot" should refer to p. 217, not p. 317) and there are helpful tables of statutes, cases and orders, regulations and rules. In his preface to the First Edition Dr. Moriarty said that the purpose of this book was to assist police officers in attaining a working knowledge of the law

that they have to enforce. Although it may not contain a complete review of all the offences which may be committed, subject to what we have already said, this edition ensures that the work will continue to fulfil its original purpose.

The Attorney in Eighteenth-Century England. By ROBERT ROBSON. pp. xii and (with Index) 182. 1959. Cambridge: University Press. £1 5s. net.

If in the midst of an active professional life a solicitor is able to make time for some contemplative reading, he might do worse than read about the activities of, and the attitude of society towards, his forbears. The author of this work throws much light upon both during his selected period. We were interested to learn that already in the early years of the eighteenth century proposals were being made for prohibiting anyone to practise as an attorney or solicitor unless he had served a clerkship of five years and for limiting the number of an attorney's articulated clerks to two at any one time; that a Society of Gentlemen Practisers was flourishing at least as early as 1739; and of the struggle with the Scriveners' Company in the middle of the century. The early years of some provincial law societies are described and solicitors' contributions to estate management clearly shown. Before we propound that we are too hard-pressed in this day and age we should contemplate the activities of one Christopher Wallis, attorney of Helston, Cornwall, between 1790 and 1815. A fourteen-hour day was not unusual for him and his annual profits for the early years of the nineteenth century were well over four figures and amounted to no less than £2,130 in 1804. An immense amount of interesting information is to be found between the covers of this book.

The Grotius Society. Transactions for the year 1957. Problems of Public and Private International Law. Volume 43. pp. xxix and 172. 1959. London: The Grotius Society. Price to non-members £1 15s. net.

As many will know, the objects of the Grotius Society are "to afford facilities for the study, discussion and advancement of public and private international law and to make suggestions for their reform." This volume contains a record of the Society's activities during 1957 including the text of the papers presented to the Society in that year by experts in this field. The papers range from "The Mexican Oil Dispute, 1938-1946," to "The Use of Force in the Protection of Nationals" and from "Legal Deterrents and Incentives to Private Foreign Investments" to "The Philosophical Tradition in International Law." While these are not topics of everyday importance to many solicitors, if time allows, even those who are not directly concerned with the problems of public and private international law from the practical point of view will find these papers interesting to read.

POINTS IN PRACTICE

Questions, which can only be accepted from practising solicitors who are subscribers either directly or through a newsagent, should be addressed to the "Points in Practice" Department, The Solicitors' Journal, Oyes House, Breems Buildings, Fetter Lane, London, E.C.4. They should be brief, typewritten in duplicate, and accompanied by the name and address of the sender on a separate sheet, together with a stamped addressed envelope. Responsibility cannot be accepted for the return of documents submitted, and no undertaking can be given to reply by any particular date or at all.

Costs—DISCONTINUATION OF PROCEEDINGS—DISBURSEMENTS DISALLOWED

Q. We act for the respondent in proceedings brought in the county court under the Landlord and Tenant Act, 1954, by an applicant claiming a new lease. The respondent is a partner in our firm, and has been sued as a personal representative. The proceedings were commenced in September, 1958, and the hearing was fixed to take place on 10th December, 1958. On 28th November, 1958, the applicant's solicitor informed us that these proceedings were being discontinued for the express purpose of bringing fresh proceedings at a later date. In connection with the defence we had instructed architects and surveyors to prepare a schedule of dilapidations and wants of repair, a copy of which was referred to in the answer filed with the court and served upon the applicant's solicitors, and a surveyor has to inspect the property in order to qualify to give evidence in regard to its rental value. Although the action was not tried, as the applicant discontinued the proceedings, we included in the respondent's bill of costs the following two disbursement

items: (i) Qualifying fee, including preparation of schedule of dilapidations and wants of repair. (ii) Qualifying fee, including inspection of property. These aforementioned items were under item 33 (a) of Appendix B. The registrar disallowed both items on the ground that item 33 (a) does not apply to qualifying fees. We have also inserted under item 58 instructions for affidavit as to documents, and this was disallowed on the ground of the respondent being also a partner in the firm of solicitors pursuing the proceedings. The registrar held that we could not instruct ourselves. Was the registrar entitled to disallow the above-mentioned items?

A. As regards the first part of the inquiry, it is presumed that (there being no hearing) the registrar determined on taxation what scale should be applicable—under Ord. 47, r. 15 (1), proviso. It cannot be right to claim any witness fees under item 33 of Appendix B, which contains scales of solicitors' charges and disbursements. Appendix C does not apply to expert witnesses, and any claim must be founded on Ord. 47, r. 30. It ought to be possible in a proper case to persuade the registrar to allow a

qualifying fee up to three guineas under para. (2) or for a written report in lieu, under para. (4). But a certificate is required to secure a greater allowance: proviso to para. (2). It is not clear how such a certificate can be sought when there is no hearing, it appearing that Ord. 47, r. 21 (4), has not been applied to this situation: *cf. ibid.*, r. 15 (2). The registrar is correct on the other point: Ord. 47, r. 26; see A.C.C.P. 1958, p. 804, and Halsbury, 2nd ed., vol. 31, last part of para. 197 on p. 163.

Change of Name—ILLEGITIMATE CHILD—WHETHER DEED POLL ACCEPTABLE BY AUTHORITIES REQUIRING PRODUCTION OF BIRTH CERTIFICATE

Q. The mother of an illegitimate child, who has subsequently married, is anxious that the child should now take the name of her husband. This can, of course, be done by adoption, but this seems rather a cumbersome way of doing it, and we are wondering whether a deed poll made by the mother would be adequate evidence of the change of name. The child is far too young to execute a deed poll of his own accord. Would

such a deed poll be effective to carry out the desired purpose, and would it be accepted by all educational or Government departments requiring production of the birth certificate?

A. A deed poll should be made by the mother recording the change of name of the infant. A suitable form for the deed poll, to be made by the mother *on behalf of the child*, is to be found on pp. 24 and 25 of Oyez Practice Notes, No. 1, Change of Name, by J. F. Josling, Solicitor, 5th ed., 1956 (published by The Solicitors' Law Stationery Society, Ltd., price 3s. net). If the deed poll is duly enrolled at the Central Office of the Supreme Court no difficulties with Government departments should be experienced. For procedure of enrolment see the Enrolment of Deeds (Change of Name) Regulations, 1949 (S.I. 1949 No. 316) as amended by the Enrolment of Deeds (Change of Name) (Amendment) Regulations, 1951 (S.I. 1951 No. 377). We would respectfully suggest, however, that the future of the child, both materially and psychologically, would be more assured if his mother and her husband jointly adopted him.

NOTES AND NEWS

HIGH COURT OF JUSTICE—LONG VACATION, 1959 NOTICE

During the vacation, up to and including Monday, 31st August, all applications "which may require to be immediately or promptly heard" are to be made to the Hon. Mr. Justice Phillimore. *No application which does not fall strictly within this category will be dealt with.*

CHANCERY DIVISION

Court business.—The Hon. Mr. Justice Phillimore will sit in the President's Court, Royal Courts of Justice, at 10.30 o'clock on Wednesdays, 5th, 12th, 19th and 26th August, for the purpose of hearing such applications of the above nature as, according to the practice in the Chancery Division, are usually heard in court.

Papers for use in court.—The following papers for the Vacation Judge are required to be left with the Cause Clerk in attendance at the Chancery Registrar's Office, Room 136, Royal Courts of Justice, before 1 o'clock two days previous to the day on which the application to the Judge is intended to be made:—

1. Counsel's certificate of urgency or note of special leave granted by the judge.
2. Two copies of notice of motion, one bearing a 5s. impressed stamp.
3. Two copies of writ and two copies of pleadings (if any).
4. Office copy affidavits in support and in answer (if any).

No case will be placed in the judge's paper unless leave has been previously obtained or a certificate of counsel that the case requires to be immediately or promptly heard, and stating concisely the reasons, is left with the papers.

N.B.—Solicitors are requested when the application has been disposed of, to apply at once to the judge's clerk in court for the return of their papers.

QUEEN'S BENCH DIVISION

Queen's Bench Chambers business.—The Hon. Mr. Justice Phillimore will sit for the disposal of Queen's Bench business in the President's Court, at 10.30 o'clock on Tuesdays, 4th, 11th, 18th and 25th August.

PROBATE, DIVORCE AND ADMIRALTY DIVISION

Summonses will be heard by the Registrar at the Probate and Divorce Registry, Somerset House, every day during the vacation (Saturdays excepted).

The Hon. Mr. Justice Phillimore will sit for the disposal of probate and divorce business in the President's Court at 10.30 o'clock on Thursdays, 6th, 13th, 20th and 27th August.

Motions and judges' summonses may be entered by leave of a registrar on or before 2 o'clock on the Thursday of each week for hearing on the following Thursday.

Papers for motions may be lodged at any time before 2 o'clock on the preceding Thursday.

The offices of the Probate and Divorce Registries will be opened at 10 a.m. and closed at 4 p.m., except Saturdays.

Urgent matters when the judge is not present in court or chambers.

—When the judge is not present in court or chambers, application may be made if necessary, but only in cases of real urgency, to the judge personally. The address of the judge must first be obtained at Room 136, Royal Courts of Justice, and telephonic communication to the judge is not to be made except after reference to the officer on duty at Room 136. Application may also be made by prepaid letter, accompanied by the brief of counsel, office copies of affidavits in support of the application and a minute on a separate sheet of paper, signed by counsel, of the order he may consider the applicant entitled to, and also an envelope, sufficiently stamped, capable of receiving the papers, addressed as follows:—"Chancery Official Letter: To the Registrar in Vacation, Chancery Registrars' Chambers, Royal Courts of Justice, London, W.C.2."

Chancery Registrars' Chambers,
Royal Courts of Justice,
Room 136.

July, 1959.

BUILDING SOCIETIES

HOUSE PURCHASE AND HOUSING ACT, 1959

The following building societies have been designated for the purposes of s. 1 of the House Purchase and Housing Act, 1959: Accrington Savings and Building Society, Cheshunt Building Society, Eligible and United Building Society, Hinckley Permanent Building Society, Luton Building Society, Summers Building Society, Tynemouth Building Society. Lists of building societies previously so designated were published at pp. 512, 548, 557, *ante*.

NORTHAMPTONSHIRE DEVELOPMENT PLAN APPROVED

The Minister of Housing and Local Government has approved with modifications the development plan for the County of Northamptonshire. The plan, as approved, will be deposited in the County Hall, Northampton, for inspection by the public.

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